United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-7278

Volume A-2
Page A-211(245) to A-211(648)

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-7278

B

MARGARET MARY MCDONNELL MURPHY,
Plaintiff-Appellant,

against

MCDONNELL & CO., INCORPORATED and THE NEW YORK STOCK EXCHANGE by ROBERT W. HAACK, President,
Defendants.

JAMES F. MCDONNELL, JR., individually, as Trustee under the Will of James F. McDonnell and as Executor of the Estate of Anna M. McDonnell, and CHARLES E. MCDONNELL, as Executor of the Estate of Anna M. McDonnell,
Plaintiff-Appellants,

against

THE NEW YORK STOCK EXCHANGE by ROBERT W. HAACK, THE NEW YORK STOCK EXCHANGE, INC., THE AMERICAN STOCK EXCHANGE by H. VERNON LEE, JR., Secretary, and MCDONNELL & CO., INC.,
Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX (Vol. A-2)

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LIST OF CONTENTS

Volume I

	Page
List Of Relevant Docket Entries	A-vi
Order Consolidating Civil Actions 71 Civ. 461 And 71 Civ. 1940 For All Purposes, Dated April 13, 1973 [Doc. 150]	A-1
Murphy Amended Complaint [Doc. 174]	A-3
Answer Of NYSE To Murphy Amended Complaint [Doc. 175]	A-25
Answer Of McDonnell & Co. To Murphy Amended Complaint [Doc. 177]	A-31
McDonnell Amended Complaint [Doc. 203] ...	A-39
Answer Of NYSE To McDonnell Amended Complaint [Doc. 164]	A-75
Answer Of McDonnell & Co. To McDonnell Amended Complaint [Doc. 204]	A-83
Answer Of Amex To McDonnell Amended Complaint [Doc. 205]	A-97
Plaintiffs' Request To Charge [Doc. 187]..	A-109
Plaintiffs' Supplementary Request To Charge [Doc. 193]	A-153
NYSE'S Request To Charge [Doc. 206]	A-171
NYSE'S Supplemental Request To Charge [Doc. 188]	A-201
NYSE'S Second Supplemental Request To Charge [Doc. 189]	A-203
NYSE'S Third Supplemental Request To Charge [Doc. 190]	A-207
NYSE'S Fourth Supplemental Request To Charge [Doc. 209]	A-209

Page

Transcript Of Trial, Opening Statements Of Counsel, April 28, 1975 [Doc. 147] .. A-211(1)

Transcript Of Trial, Testimony Of Margaret Murphy, April 28, 1975 [Doc. 147] ..... A-211(34)

Transcript Of Trial, Testimony of Margaret Murphy Continued, April 29, 1975 [Doc. 147] ..... A-211(103)

Transcript Of Trial, Deposition Testimony Of Anna McDonnell, April 29, 1975 [Doc. 147] ..... A-211(198)

Volume II

Transcript Of Trial, Testimony Of James F. McDonnell, Jr., April 29, 1975 [Doc. 147] ..... A-211(245)

Transcript Of Trial, Testimony Of James F. McDonnell, Jr., Continued, April 30, 1975 [Doc. 147) ..... A-211(263)

Transcript Of Trial, Testimony Of James F. McDonnell, Jr., Continued, May 1, 1975 [Doc. 147] ..... A-211(456)

Transcript Of Trial, Testimony Of Andrew R. McElroy, May 1, 1975 [Doc. 147] ..... A-211(591)

Volume III

Transcript Of Trial, Testimony Of Andrew R. Mc Elroy, Continued, May 2, 1975 [Doc. 147] ..... A-211(650)

Transcript Of Trial, Testimony Of Andrew R. McElroy, Continued, May 5, 1975 [Doc. 148] ..... A-211(740)

Transcript Of Trial, Testimony Of Herbert E. Schuette, May 5, 1975 [Doc. 148] .... A-211(810)

Transcript Of Trial, Testimony Of Herbert E. Schuette, Continued, May 6, 1975 [Doc. 148] ..... A-211(918)

Page

Volume IV

Transcript Of Trial, Deposition Testimony Of Anna M. McDonnell, May 6, 1975 [Doc. 148] ..... A-211(1022)

Transcript Of Trial, Testimony Of George H. Newman, May 6, 1975 [Doc. 148] ..... A-211(1056)

Transcript Of Trial, Testimony Of George H. Newman, Continued, May 7, 1975 [Doc. 148] ..... A-211(1090)

Transcript Of Trial, Testimony Of Richard Greves, May 7, 1975 [Doc. 148] ..... A-211(1186)

Transcript Of Trial, Testimony Of Robert A. Spies, May 7, 1975 [Doc. 148] ..... A-211(1217)

Transcript Of Trial, Testimony Of David L. Ratner, May 8, 1975 [Doc. 148] ..... A-211(1244)

Transcript Of Trial, Testimony Of Lee D. Arning, May 8, 1975 [Doc. 148] ..... A-211(1310)

Transcript Of Trial, Testimony Of Lee D. Arning, Continued, May 9, 1975 [Doc. 148] ..... A-211(1390)

Volume V

Transcript Of Trial, Testimony of H. Vernon Lee, Jr., May 9, 1975 [Doc. 148] ..... A-211(1431)

Transcript Of Trial, Argument Of Counsel, May 12, 1975 [Doc. 149] ..... A-211(1443)

Transcript Of Trial, Testimony Of Bruce M. Stargatt, May 13, 1975 [Doc. 149] ... A-211(1664)

Transcript Of Trial, Testimony Of Thomas Ford, May 13, 1975 [Doc. 149] ..... A-211(1696)

Transcript Of Trial, Testimony Of Richard Olney III, May 13, 1975 [Doc. 149] ..... A-211(1740)

Transcript Of Trial, Testimony Of Paul K. McDonald, May 13, 1975 [Doc. 149] ..... A-211(1793)

Page

Volume VI

Transcript Of Trial, Testimony Of Paul K. McDonald, Continued, May 14, 1975 [Doc. 149] ..... A-211(1827)

Transcript Of Trial, Deposition Testimony Of Fred J. Stock, May 14, 1975 [Doc. 149] ..... A-211(1853)

Transcript Of Trial, Testimony Of Robert M. Bishop, May 14, 1975 [Doc. 149] ..... A-211(1873)

Transcript Of Trial, Testimony Of Robert M. Bishop, Continued, May 15, 1975 [Doc. 149] ..... A-211(2016)

Volume VII

Transcript Of Trial, Testimony Of Robert M. Bishop, Continued, May 19, 1975 [Doc. 201] ..... A-211(2190)

Transcript Of Trial, Deposition Testimony Of Fred J. Stock, May 19, 1975 [Doc. 201] ..... A-211(2311)

Transcript Of Trial, Testimony Of Robert A. Spies, May 19, 1975 [Doc. 201] ..... A-211(2318)

Transcript Of Trial, Testimony Of James F. McDonnell, Jr., May 19, 1975 [Doc. 201] ..... A-211(2338)

Transcript Of Trial, Testimony Of Margaret Murphy, May 19, 1975 [Doc. 201] ..... A-211(2342)

Transcript Of Trial, Robing Room Conference, May 20, 1975 [Doc. 201] ..... A-211(2351)

Transcript Of Trial, Closing Statements Of Counsel, May 20, 1975 [Doc. 201] .... A-211(2379)

Transcript Of Trial, Robing Room Conference, May 21, 1975 [Doc. 201] ..... A-211(2519)

Transcript Of Trial, Closing Statements Of Counsel, Continued, May 21, 1975 [Doc. 201] ..... A-211(2531)

Page

Volume VIII

Transcript Of Trial, Charge Of The Court On The Issue Of Liability, May 21, 1975 [Doc. 201] ..... A-211(2596)

Transcript Of Trial, Robing Room Conference, May 22, 1975 [Doc. 201] ..... A-211(2638)

Transcript Of Trial, Charge Of The Court On The Issue Of Damages, May 22, 1975 [Doc. 201] ..... A-211(2715)

Opinion And Order Granting McDonnell & Co.'s Post Trial Motions, Dated December 5, 1975 [Doc. 105] A-213

Order Denying Plaintiffs' Post Trial Motions, Dated December 18, 1975 [Doc. 195] A-215

Order With Respect To Prejudgment Interest Dated April 22, 1976 [Doc. 106] A-217

Final Judgment Entered May 13, 1976 [Doc. 200] A-219

[This page unnumbered and left blank]

J A M E S F. M C D O N N E L L, J R., called as a witness on behalf of the plaintiffs, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BEEBE:

Q Mr. McDonnell, when were you born?

A March 27, 1918.

Q And did you attend college?

A Yes, I did.

Q When did you graduate?

A Georgetown University.

Q When was that, please?

A 1939.

Q And did you enter the Army?

A Yes, I volunteered.

Q And how long were you in the Army?

A Five years.

Q And what branch or what rank did you attain?

A Went in as a private; came out as a captain.

Q What year did you come out?

A 1945.

Q Since leaving the Army, have you had any involvement with the securities business?

A Yes. I worked at McDonnell and Company for

several months in 1945.

Q And after leaving McDonnell & Company, what did you do?

A I went out to Detroit and went through a training program at the Ford Motor Company.

Q Did you go into the automotive business?

A Well, that is the automotive business.

Q I mean after the training program.

A Yes, I went into a Ford dealership. This was after I left the Ford Motor Company itself. I went into a Ford dealership and numerous other businesses.

Q Could you describe the businesses?

A Yes. One was a Howard Johnson restaurant. Then I bought a tool shop, machine tool shop. Slightly before that I became a manufacturer's agent, which is a salesman, for a supplier to the automotive industry. That happened to be a Cleveland firm called Ferrow Machine & Foundry.

Then I became a manufacturer's agent for Aynesworth Manufacturing Corporation, and subsequently -hat was a public corporation. I subsequently became president of that corporation.

Q Does that take us up to right now, or were there further developments?

A I went into the insurance business, another automobile dealership, the retail finance business, and the hotel business. I think that covers it.

Q What do you do now?

A I try to manage those businesses.

Q Which ones are you currently involved in?

A Well, I am currently involved in one hotel, one separate restaurant, one insurance company. I believe that's it.

I have sold one automobile dealership just recently.

Q How do you go about making your decisions as to what business to go into or not to go into? What is your procedure?

A Well, I try to examine the profit potential, I try to investigate it as thoroughly as I can, and that would be it, I suppose.

Q Before the transactions involved here, beginning late 1968, had you ever analyzed the securities business from the point of view of making an investment in it?

A No.

Q Had you ever done any research or had any research done for you about any particular brokerage houses, firms?

A No.

Q Would that include McDonnell & Company?

A Yes.

Q Did you have any involvement with McDonnell & Company prior to -- personal involvement , or as a trustee, prior to December 1968?

MR. STEIN: I object to the question as leading.

THE COURT: Overruled. I think it is just background.

A We are in the time frame from 1945 to 1968?

Q Yes.

A In that time frame I had absolutely no connection whatsoever with McDonnell & Company, or any other brokerage office.

Q Did there come a time in late 1968 when you were approached by McDonnell & Company and asked to become involved in that company?

A Yes.

Q Who approached you?

A My brother, Morgan McDonnell, approached me.

Q Did Morgan have something to do with McDonnel & Company at that point?

A Yes; he was an employee.

Q What did he ask you to do?

A He told me they were having trouble with their manager in the Detroit office, that he wanted to get out of that position because he could make more money as a salesman than he could as a manager. I think the fellow's name was Jim Lark.

He said, "We have to get another manager out here," and he asked me if I knew anybody in the business. I said to Morgan that I don't know anybody, that I have no connection with this business.

He said, "Would you consider taking it?"

Is that enough for this question?

Q If that is the extent of what he said.

Did you agree at that point?

A No, I told him I had no interest whatsoever in it, that I had other problems of my own, that really, "No, Morgan, I am not the slightest bit interested in this."

Q What was the period of tiem when you had the first conversation with Morgan about the business?

A I think it must have been January 1969; late January, I think.

Q Did there come a time when you were spoken to again on this subject?

A Yes. He came back to me shortly thereafter and

he said, "We are really up against it."

MR. STEIN: I object to what Morgan said as hearsay. He is not part of this proceeding.

THE COURT: He is an official of the company.

MR. STEIN: Can we establish that, that he was an official of the company in a particular capacity at that time?

MR. BEEBE: I thought we had.

THE COURT: I thought we had. Overruled.

Proceed.

Q Mr. McDonnell, when Morgan came to you the second time, what did he say to you and what did you say to him?

A Well, he came back to Detroit, and he said that he was really in trouble, that they really needed somebody and they needed somebody pretty quick. He said to me, "You have always appeared to me to be somewhat not as busy as other people, so how about it, would you do me a favor and do it?"

I said, "Well, I'll think it over, Morgan."

He left, and then a couple of days later I called him and said, "All right, I'll do it, Morgan."

He explained it wasn't much of a job, and I think I told him, "Morgan, I have had a lot of experience, I have been the president of one of the largest automobile

parts manufacturers here in Detroit, so I suppose it won't be all that burdensome, so I'll take it."

Q Can you fix the period of time this second conversation took place?

A I would say it was February of 1969.

Q Where were you based at that point? Where was your home?

A In Detroit. I have lived there since 1945.

Q What was the position he was asking you to take on?

A Manager of their office. They have a branch office.

Q Was it an existing branch office?

A Yes, it had been in existence.

Q Now, you agreed with him, you said, Then what happened?

A Well, I had an office in the Michigan Consolidated Gas Building -- that's a building in Detroit. It was across the street from McDonnell & Company's office. So I had to move from that office to McDonnell & Company's office in order to do this. So my first job, of course, was to sublet my own personal office and then I called Morgan and I said, "Look, I have a bunch of furnishings in this office and I have to move these" -- if I get too

much in detail shut me up.

Any any rate, I made the transition from my own office into McDonnell & Company's office, subletted my office and everything else. I moved in.

Q And after you had done this, were you asked to sign any papers and make -- and become a member or an allied member of the New York Stock Exchange?

A Well, when I got into this office of McDonnell & Company, I was informed by Tom McKay of McDonnell & Company that I had to become an allied member of the New York Stock Exchange, and in addition to which I had to buy three hundred shares of McDonnell & Company's voting stock. Otherwise, the New York Stock Exchange would not permit me to be a manager of that office and supervise account executives. This was told to me by Mr. McKay.

Q And what did you tell Mr. McKay?

A I guess I told Mr. McKay that I was not only astonished --

THE COURT: I take it you agreed you would do this; is that correct?

THE WITNESS: Ultimately, yes.

THE COURT: Is there anything relevant in between those points?

MR. BEEBE: Yes. I think there was a moment of

strong resistance.

MR. BROOKS: I object to counsel's characterizing that.

THE COURT: Ladies and gentlemen, as I told you from the beginning, anything the attorneys say is not evidence, so disregard all remarks of counsel that you might construe as evidence.

Go ahead.

Q Mr. McDonnell, did you ten receive any papers that you were to sign in connection with this purchase of stock and application for membership?

A Yes. I had to fill out a very lengthy application to become a member, an allied member of the New York Stock Exchange, and also the American Stock Exchange, or Amex, as we are referring to it here, and I believe NASD, National Association of Securities Dealers.

Q I show you a document and ask is that one of the documents that you filled out.

A Yes, sir.

MR. BEEBE: May I offer that as the next exhibit.

(Plaintiff's Exhibit No. 13 was marked for identification.)

Q I direct your attention to the second to last

page, and ask you if that is your signature on there.

A Yes, sir, it is.

MR. BEEBE: I offer that as the next exhibit in evidence.

MR. BROOKS: No objection.

(Plaintiff's Exhibit No. 13 was received in evidence.)

Q Now, you mentioned the American Stock Exchange. I hand you a document and ask you if that is your signature.

A Yes, sir, it is.

MR. BEEBE: I offer that in evidence.

(Plaintiff's Exhibit No. 14 was marked for identification.)

THE COURT: Any objection to 14?

MR. LOFLIS: No objection.

THE COURT: Received.

(Plaintiff's Exhibit No. 14 was received in evidence.)

Q Now, Mr. McDonnell, before purchasing the stock and making the applications, did you make any inquiries of McDonnell & Company as to its financial or operational condition?

A Well, I was furnished some information by McKay

as to the financial condition of McDonnell & Company.

MR. BROOKS: I object to the question for the reason that we have not established that Mr. McDonnel- had purchased any stock. Plaintiff's counsel assumed that in his question. So far all we have is an application for membership.

THE COURT: Overruled. Go ahead.

Q Please continue your answer.

A I received certain documents in the mail from him purporting to set forth the financial condition of McDonnell& Company. I think the documents are here somewhere, copies of them.

Q Did there come a time when you bought some shares of McDonnell & Company common stock in response to this request?

A Yes.

Q And did there come a time when McDonnell & Company went out of business?

A Yes, that's right.

Q And did you make a claim in the Court of Chancery, State of Delaware, for the moneys you had put in for the common stock?

A Yes.

Q I show you a document and ask you if on the third

and fourth pages thereof there appears your signature.

A Yes, sir.

Q Does that represent the claim you made in the Court of Chancery on your behalf for $20,718, and interest?

MR. STEIN: These series of questions is leading, your Honor, and I object.

THE COURT: Is there any substantial contention about it?

MR. STEIN: I am objecting as to the form.

THE COURT: It is an area where the exhibit will speak for itself.

MR. STEIN: That is correct.

THE COURT: Overruled.

There are certain areas that you are right about, but here I don't feel that it works any prejudice to anybody.

Plaintiff's Exhibit 15 is received in evidence.

(Plaintiff's Exhibit No. 15 was received in evidence.)

Q And did you also file a claim concerning these shares addressed to the liquidator of McDonnell & Company, and I show you a document that has previously been marked during the depositions as Defendant's Exhibit 40, and ask you if that represented your claim.

A The reason I hesitate is there is no signature on this document. However, I did file a claim. This particular document doesn't seem to have a signature thereon.

Q This is a xerox copy.

Could you go through that and see if that represents a conformed copy without your signature of what indeed you filed in Delaware -- not in Delaware, this is the one against the liquidator.

THE COURT: Any dispute as to this instrument being what it appears to be?

MR. BROOKS: We haven't gotten a copy, your Honor.

MR. BEEBE: I just handed one to Mr. Loflis, defense counsel.

MR. BROOKS: Thank you.

(Pause.)

MR. BROOKS: Your Honor, we agree that a claim th was designated Deposition Exhibit 40 to the liquidator was submitted to the liquidator. Subject to verification, I have no objection to it being admitted into evidence. It may be the copy marked at the deposition does have his signature. We don't dispute that he did sign it.

THE COURT: Very good.

MR. BEEBE: May we mark that as the next exhibit, please?

(Plaintiff's Exhibit No. 16 was received in evidence.)

Q Turning to the exhibits attached to this claim in evidence, could you testify as to which one of these you received, the documents you said you received before you bought the stock?

A The document set forth as Exhibit A to this I did receive.

Q What is that?

A That is a certificate of amendment of certificate of incorporation of McDonnell & Company.

Q If you can pause just for a minute there. Is that dated October 1966?

A Can you tell me what page I am supposed to look at?

Q I'm sorry, at the very back.

THE COURT: Page 35.

A 24th day of October, 1966; correct.

Q Did you receive the next document, also?

A The first page of the next document I did recieve.

THE COURT: How is that identified?

THE WITNESS: That identifies itself as Exhibit A to my claim, your Honor -- I beg your pardon, B.

THE COURT: Exhibit B to Exhibit 16 in evidence?

THE WITNESS: That, sir, I did receive.

A The next page, which is the statement of financial condition of 1964, the next one 1965, the next one 1966, 1967, I did receive. The next one, which is identified as Exhibit C, I did receive. The next one, which is Exhibit D, I did receive. This second portion I received from Mr. McKay.

THE COURT: When did you receive these?

THE WITNESS: I received these prior to my purchase of the stock.

Q Are we talking about 1969?

A Yes, just prior. After I had moved over into McDonnell & Company's office and had been informed that I had to buy stock, he sent this along to me.

The next document I also received --

THE COURT: That is Exhibit E?

THE WITNESS: I can't read it, your Honor.

MR. BEEBE: I will so state it is. His copy doesn't have it on there.

Q Was that dated, on the last page, as of May 29, 1968?

A Yes. It says October 1968 on the bottom of the page.

The next is a letter dated April 11, 1969. I also received that.

Q In fact, was that letter the covering letter that sent you many of these documents?

A I have to read it and see.

Q It is denoted exhibit F, and lists some enclosures at the bottom.

A Yes. Yes, right.

Now,the next document appears to be a financial statement as of October 31, 1968 of McDonnell & Company. It also has a certification of Lybrand, Ross. Brothers & Montgomery on the bottom of that.

Q Could you explain to the jury who that is?

A That is a large accounting firm that many large corporations in the United States call in to certify to the accuracy of their figures at the end of the year, end of the accounting year.

Just for the record, I cannot be sure that this item was included with Mr. McKay's other items. I don't know that it makes any difference.

The next item is a letter of May 8, 1969, written to me by Mr. McKay. I did receive same.

The next item --

THE COURT: The other are pleadings of some kind or another.

MR. BEEBE: I believe they are.

Q Is it safe to summarize the rest by saying you did not receive these prior to the time you purchased the stock?

A I would have to read Mr. McKay's letter of May 8th to determine whether that is the case or not. However, the exhibits right after that, shown as Exhibit I, Exhibit J, K, and the final piece of paper, were definitely not even written at that time. They are official court documents and Securities & Exchange Commission documents.

THE COURT: We are going to recess now until tomorrow morning.

Ladies and gentlemen,ten o'clock tomorrow morning. Continue to heed my admonition not to discuss the case with each other nor anyone else. I want you to keep an open mind.

See you at 10 a.m. tomorrow morning.

(Adjourned to April 30, 1975, at 10 a.m.)

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MARGARET MARY MC DONNELL MURPHY, et al.

vs. 71 Civ 461
71 Civ 1940

MC DONNELL & CO., INC., et al.

April 30, 1975
10:00 a.m.

Trial resumed.

- - -

(In open court; jury present)

J A M E S F. M C D O N N E L L , J R. ,

resumed.

THE CLERK: You remain sworn, Mr. McDonnell.

DIRECT EXAMINATION CONTINUED.

BY MR. BEEBE:

Q If we could review the bidding for a moment as to where we were yesterday, Mr. McDonnell, I believe we had reached the point where you had gone across the street to the McDonnell branch office in Detroit

and had them been asked to buy some stock in the company. How many shares was that?

A 300.

Q And you had received some documents from the company, and then did there come a time when you asked for some more documentation about the company's financial -- McDonnell & Company's financial condition?

A Yes.

Q I show you a document that we have marked as Exhibit 17 for identification beforehand, and it appears to be a copy of a letter from J. F. McDonnell, Jr. to Morgan McDonnell, dated April 21, 1969.

I ask you if you sent that copy to Morgan McDonnell.

A Yes, sir. That is my letter.

MR. BEEBE: I offer that in evidence, and I am furnishing copies for defense counsel.

MR. BROOKS: No objection, your Honor.

MR. STEIN: No objection.

MR. LOFLIN: No objection.

THE COURT: Received.

(Plaintiffs' Exhibit 17 was received in evidence)

Q Directing your attention to the second page

of that letter, where it says in the next to the last paragraph, "However, prior to actual purchase I would appreciate receiving a more current financial statement" -- did you receive any more current financial information from the McDonnell Company or Morgan McDonnell?

A No, sir, I don't believe I did.

Q Did you subsequently purchase the 300 shares of McDonnell Company stock?

A Yes, sir, I did.

Q Was this in approximately -- when did you purchase it?

A The best that I can recollection it was in May of 1969.

Q You applied for membership at the stock exchange, in one of the documents that was introduced yesterday, and for permission to hold voting stock of McDonnell & Company. Did you receive an advice that you had been approved?

A Yes, sir, I did.

Q I show you two pages here, which I am proposing to offer as one exhibit, which has been previously identified as Exhibit 18 for identification. The top one is a memorandum apparently from Thomas A. McKay

on McDonnell & Company stationery, addressed to James F. McDonnell, Jr., and it mentions an attachment. The second document is a copy of a letter on the New York Stock Exchange stationery from, apparently, John J. Mulcahy, Jr., secretary, addressed to McDonnell & Company, Inc.

Did you receive both those documents, or the top copy and its attachment?

A Yes, sir, I did.

MR. BEEBE: I offer that as the next exhibit.

MR. BROOKS: No objection.

(Plaintiffs' Exhibit 18 was received in evidence)

Q Now, we are in May 1969. By that time did you know of any financial or operating problems at McDonnell & Company?

A No, sir, I did not.

Q Did there come a time when you learned of such problems?

A Yes, sir. While I was in the Detroit office one day in May I received a telephone call from my brother Morgan in New York City. He informed me that due to the fact that my brother Murray, who was the

head of the firm, was indisposed in the hospital, that he was in New York with Lawrence O'Brien, the president of McDonnell & Company. My brother Murray was the chairman of the board and the chief executive officer, and Lawrence O'Brien was the president at this time. So Morgan called me and said thathe was alone there, and that he had been contacted by a Mr. Bishop of the New York Stock Exchange who was threatening to close down McDonnell & Company because of the fact that McDonnell & Company didn't have anough money, in the simplest terms, and would I please come to New York.

So I said, yes, of course. I was horrified. I was amazed that this situation even existed because I had had no prior knowledge.

So I went out to the airport, got on an airplane. I remember it was a terrible storm that day, and it took me much longer to get to New York than I thought. I arrived at the LaGuardia Airport and I called the office of McDonnell & Company from the airport and I talked to my brother. He said "I don't know what they are doing, but please get here right away."

I said call Mr. Bishop and tell him there's been a storm and I will get there in another 45 minutes.

I went in a cab and got down to McDonnell & Company. It was then after 5 o'clock, I recall. I went into the offices.

Does this answer your question?

Q Yes. Go ahead, please. What happened when you got t- the office?

A When I got to the office, Morgan met me and he took me into Lawrence O'Brien's office, and they said "We need some more money."

Q Excuse me. Could you identify for the jury who is Mr. O'Brien?

A I thought I did identify Mr. O'Brien.

THE COURT: He did. He said the president.

Q Okay.

A "We need some more money, and would you put it in?"

I said "Well, men, this is a poker game right now. I think we should get across the impression to Mr. Bishop that perhaps I would put some money in. How much do you need?"

"Well, we need a million dollars."

I said "Are you sure it's a million?"

"Oh, yes, it's a million."

I said, "Is it less than a million or more than a million?"

"Well, it's a million dollars, we think."

Mind you, this is they "think."

MR. STEIN: I move the last aside be stricken.

THE COURT: Strike out that remark. Just tell us what was said, without commenting on it. Just give us the facts.

A Yes, sir. So I said, "Well, let's see what happens when Mr. Bishop comes in."

Mr. Bishop came in. The front door was locked, he came in through the back door because it was after working hours, and he had two people with him from the New York Stock Exbhange.

He sat down and he looked at me and he said, "Well, are you going to put more money in this firm?"

I said to him "Mr. Bishop, I have been here 15 minutes. I have no idea how much money this firm needs. I can't answer that question."

He said, "Well, we have a meeting of the board of governors of the New York Stock Exchange which I have

just come out of and they are waiting for me to come back to tell them whether you are going to put more money in here or not."

I said, "Mr. Bishop, I am afraid you will just have to go back and tell them I just got to New York. After all, they know there was a storm here today, or at least there was in Michigan."

Then he got up and left. Mr. Morgan O'Brien turned to me and said, "What do you think? Are you going to put money in here?"

I said, "My answer to you is exactly the same as to Mr. Bishop."

I said, "First of all, I don't think the fellow really has any intention of closing us down, so to answer your question honestly, no, I am not going to put any money in. This is the Memorial Day weekend. I will be back after Memorial Day. So let's call the bluff.

Q That was the end of that sequence of events just before Memorial Day weekend?

A Yes.

Q Was that on a Thursday or a Friday of that week?

A I believe so, sir.

Q Did you then go away for the weekend?

A Yes, sir.

Q And did you come back on Monday?

A Yes, sir, I did.

Q Did the stock exchange shut McDonnell & Company down over the weekend or on Monday?

A No, sir, they did not.

Q Did they shut them down at any time shortly thereafter?

A No, sir, they did not.

Q Did you put in a million dollars?

A No, sir, I didn't put in a dime.

Q Did you ask for more details about what the exact status was of McDonnell & Company in its financial needs when you came back?

A Yes, sir. When I came back after the weekend holiday, I had a meeting with my brother Morgan and a man by the name of Frank Deegan, who was the -- I believe at that time the executive vice president of McDonnell & Company -- Tom Ford from the law firm of Shearman & Sterling.

I believe that they were the total that were in that room at that time. My brother Murray, as I say, was not present because he was indisposed in the

hospital. Lawrence O'Brien had sent word in that he didn't want this job in the first place and he was going to quit. So that just left us there.

I then inquired of Mr. Deegan. I said, "Frank, how much money is it going to take to put this firm in shape so that they can operate?"

He said "Frankly, I'll tell you, it's between three and five million."

This was a revelation.

THE COURT: Just tell us what was said, please.

A I said to him "Frank, there is a big difference between three and five million."

He said "Yes, but the figures we have here are totally unreliable. I know we are in violation of the Rules and Regulations of the New York Stock Exchange. We are in real bad trouble."

I said to him, knowing at that time the only thing to do was to look at the assets of the corporation, or what was around that I could convert into cash, to help the situation, I said "How many seats do we have on the New York Stock Exchange, memberships?"

You pay for those, they have a value. He said "Four."

So I turned to my brother Morgan, because I had no position here, I was not --

MR. STEIN: I am going to ask you to caution the witness about this emoting to the jury, that I had no position here a lecture on what a stock exchange seat is. That is not the witness' role, I submit.

THE COURT: Sustained. Mr. McDonnell, just tell us what was said.

THE WITNESS: Yes sir, I'm sorry.

THE COURT: Conclusions are for the jury to draw,

not for you.

THE WITNESS: I'm sorry, sir, I will try to do it properly.

THE COURT: You are unfamiliar with being a witness.

THE WITNESS: Yes, sir. Let me see where I was.

THE COURT: You were discussing the fact that there were stock exchange seats.

A He said "We have four seats". I said to my brother Morgan "I think we should sell these seats to raise cash."

Morgan then called in the floor broker, whose name was Edward F. Becker, who had been a member of McDonnell & Company for many years, and he instructed Edward Becker to sell the seats on the New York Stock Exchange.

I believe he told him to sell three seats. I can't be held to that distinctly, but this sale probably would have raised somewhere in the vicinity of three to four hundred --

MR. STEIN: There we go again, your Honor, we are talking about conclusions and inferences. I am going to object.

THE COURT: Was this the subject of discussion?

THE WITNESS: Yes, sir, it was, how much money could be raised.

MR. BEEBE: I would like him, if you will, just to relate the story, but I would like your Honor to have the witness have an opportunity to relate what the facts were, if he can keep it within the confines of the facts, without interruption.

THE COURT: Go ahead.

A The seats would have yielded somewhere in the vicinity of three to four hundred thousand dollars in cash. Mr. Becker went down to the floor of the exchange and sold those seats, realizing that amount of cash.

I then said that I did not feel that that would in any way solve the problem, but it would at least show them we are doing something. That's all.

Q About what time are we in the summer of 1969, for the guidance of the jury? Are we will in that week after Memorial Day?

A Yes, sir, we are.

Q The beginning of June?

A Yes, sir.

Q Without describing all the details, can you tell the jury what it is that you did or trided to do thereafter concerning McDonnell & Company? And I will take a time frame of June to September.

MR. BROOKS: I think the question is leading.

We don't know whether Mr. McDonnell did anything. Let's find out if he did anything.

THE COURT: I assume he did.

A Well, I viewed the situation in two ways.

THE COURT: No.

MR. BROOKS: I object.

THE COURT: I sustain it. Just what happened, Mr. McDonnell.

Q It is your phraseology. I'm sorry, sir, you have to speak in terms of what you did.

THE COURT: I think you have to take this question by question.

MR. BEEBE: All right, we will do it a piece at a time, your Honor.

THE COURT: Ask what happened next, if anything.

MR. BEEBE: All right.

Q After this raising of money by selling the seats on the exchange, or some of the seats, what did you do in terms of the problems that you had then discovered at McDonnell & Company?

A I attempted to go further, find other areas that might be areas available for cash for the company, to keep it going. This is in the early stages of my knowledge of what was going wrong.

Q Let me ask you this. Did you succeed?

A No, sir, I did not.

Q When did McDonnell & Company go out of business?

A Formally, sir?

Q Yes.

A I believe it was 1970.

Q Yesterday at the beginning of your testimony we marked as Exhibit 15 a claim that you made to the receiver in Delaware of McDonnell & Company for the value of your 300 shares.

Did there come a time when you received anything out of that claim?

A Any money?

Q Yes, it says claim for $20,718. Did you receive all or any part of that?

A No, sir, nothing.

Q Mr. McDonnell, I would like to shift now and ask you if you were a trustee under the will of your father?

A Yes, sir.

Q Did the trust that you were a trustee of have any assets at McDonnell & Company in 1968?

A Yes, sir.

Q Was one of those assets a debt called a Series B debenture?

A Yes, sir. That is correct.

Q I show you a document which we have previously marked as 19A for identification and ask you if that is a certified copy of the Series B debenture (handing to witness).

A Yes, sir, to the best of my knowledge it is.

MR. BEEBE: Any objection?

MR. LICHSTEIN: We have no objection.

MR. STEIN: No objection.

MR. LOFLIN: No objection.

(Plaintiffs' Exhibit 19A received in evidence.)

MR. BEEBE: It is an original certified copy. I have no copies myself.

Q When was that debenture due?

A December 31, 1968.

Q What is a debenture?

A It is, in effect, a promissory note wherein McDonnell & Company promised to pay on December 31, 1968, a certain amount of dollars to my father's estate.

Q Was that note paid to your father's estate? Was the money --

A No, sir, that note was not paid.

Q How much was the amount?

A The amount was $381,622.97.

Q You just testified that it was not paid. When did you first learn that it was not paid?

A I first learned that it was not paid in the latter part of June or the early part of July, 1969.

Q How did you learn that fact?

A I was at McDonnell & Company at the time, and I had realized that the situation was very serious, and I immediately went to try to find out what was my involvement. I was a trustee. So I went into the secretary's office of McDonnell & Company, a lady by the name of Dorothy Oakes and I said "Mrs. Oakes, may I please see the trust file, the estate file."

She agreed, so I went into the file and I took out this debenture, or this note, and examined it. Immediately it came to my attention that it was overdue, that it should have been paid off the preceding December. Right underneath it there was another debenture known as the Series E debenture, which had been substituted for this debenture. That was the very first time that I knew that there was another debenture involved, a substitute debenture.

Q Had you authorized as a trustee the substitution of the E for the B?

A No, sir, that was the first time that I had ever seen that there was such a thing.

MR. STEIN: I object and move the witness' answer be stricken and he answered the question as to whether or not he authorized it.

THE COURT: I think he has already testified in a previous answer to the same set of facts.

MR. STEIN: Th last sentence I submit with all due deference was not responsive to the question asked by his lawyer.

THE COURT: It isn't, but he gave that answer about two answers ago, that this was the first time he had seen it, so I will allow it to stand.

Go ahead.

THE COURT: Mr. McDonnell, I don't think you told the jury what you are a trustee of and what's involved in being a trustee and what your duties were as a trustee. Would you please relate those?

THE WITNESS: Yes, sir. When a member of your family, such as your mother or father dies, whatever is left in the way of assets or money ultimately passes on to the trustees as a custodian, as a person who guards these things. It is an extremely important duty imposed on you because you have many people that you are responsible to. It is the highest responsibility that a man ever gets, really, to become a trustee. It is the most responsible position.

THE COURT: How many trustees were there of this estate?

THE WITNESS: There were three trustees, my mother, my brother Murray, and myself.

THE COURT: And this is the estate of your father?

THE WITNESS: This is the estate of my father, sir.

THE COURT: Very well. Go ahead, Mr. Beebe.

Q Did there come a time when you received a copy of the E debenture? And I show you a copy of a letter which has already been marked in evidence as part of Exhibit 11A. It is a letter from Mr. Olney of McDonnell & Company to Richard Jones, and it encloses a document headed "Series E."

MR. BEEBE: I am going to offer that in evidence as 11B, though it's been marked, just to keep it separately.

A I did receive it.

MR. BEEBE: Why don't we get the mechanics of marking that as 11B. And I am offering that in evidence.

MR. BROOKS: May we see a copy?

MR. BEEBE: It is part of 11A.

MR. BROOKS: Then it is in evidence.

MR. BEEBE: I am offering it to be marked separately.

MR. BROOKS: We have no objection to it.

THE COURT: I understand it is already in evidence

as part of the larger package which has already been marked, so it is 11B in evidence.

(Plaintiffs' Exhibit 11B received in evidence.)

Q I think the Judge asked you one question I am not sure you answered. Who were the other trustees?

A I did answer that. The other trustees were my mother and Murray McDonnell, my brother.

Q Did you contact your mother after learning that the Series E debenture had been substituted for the Series B?

A Yes, sir, at once.

Q And did you ask her whether she had authorized this?

A Yes, I did.

Q What did she say?

A She said no, she did not.

Q One other technical term we ought to get in here is, when a debenture is substituted or a new instrument is substituted for another one, is there a term that's used to describe that sometimes? Is that called a roll over?

A Yes, it is sometimes referred to a roll over, when one debt instrument replaces another. Provided they are absolutely similar.

Q Were these two similar?

A No, sir, they were not similar.

Q What were the major differences?

A The second debenture or the E debenture, was far less favorable -- the terms of it were far less favorable than the original ones. I suppose that's enough.

Q Can you have a roll over of a substitution like that without it being authorized?

A No, sir. It requires the authorization of at least two trustees.

MR. BROOKS: I think that's a conclusion of law and move that it be stricken, unless counsel can connect it up with some matters of fact or some instrument that says that.

MR. BEEBE: I will try and connect that, your Honor.

THE COURT: No. He knows the powers, he is one of the trustees and the powers and he can testify as to what it takes to act.

MR. BROOKS: I don't think we established that's what he was testifying to.

THE COURT: I assumed it was.

Put the question a different way, Mr. Beebe.

MR. BEEBE: I will be glad to spread that on the record, your Honor.

Q Mr. McDonnell, what number of trustees were necessary to take actes under the trust instrument?

A It was and is my understanding that at least two trustees must agree to the substitution.

Q And you have that understanding from reading the trust instrument and being a trustee under it?

A Yes.

Q Have you taken other actes under the trust instrument with your co-trustees?

A Yes, sir, I have.

Q And did two trustees authorize this act?

A No, sir, two trustees did not authorize this act.

Q Now, after your mother told you that she hadn't authorized it and you hadn't authorized it, what did you do next about the substitution?

A The first thing I did was to contact my lawyer in Detroit. I told him the circumstances and he said, "All right, get me" --

MR. STEIN: Your Honor, I object to what the lawyer said.

THE COURT: Yes, sustained.

Q Did you take any action or did the lawyer take any action -- I will limit it to you. Did you take any action to inform McDonnell & Company what you had discovered?

A Yes, sir, I did.

Q What did you do?

A The first thing I did was to have a letter prepared by my lawyer notifying everyone at McDonnell & Company, their lawyers and their public accountants that I and my mother, who would also sign this letter--

THE COURT: Hold on a minute. You are getting into the terms of a document I take it is going to go in evidence, and the document is the best evidence.

So you had a letter prepared and sent, I take it?

THE WITNESS: Correct, sir.

THE COURT: You are being shown Exhibit 19 for identification. Is that the letter that you had prepared and sent?

THE WITNESS: It is, sir.

THE COURT: Any objection to its receipt in evidence?

MR. BROOKS: Your Honor, I believe it already is in evidence as Exhibit 9 to one of the exhibits.

THE COURT: It can go into evidence at this point as Exhibit 19.

MR. STEIN: No objection.

(Plaintiff's Exhibit 19 received in evidence.)

THE COURT: Mr. Beebe, do you want to read that letter to the jury?

MR. BEEBE: Yes,your Honor.

(Plaintiffs' Exhibit 19 read to the jury.)

MR. BROOKS: Your Honor, may I request counsel, if he hasn't, and I am not sure, to read the date of the letter and those who are designated as receiving a copy of the letter?

THE COURT: Yes. Please do.

MR. BEEBE: It is on the letterhead of James F. McDonnell, Jr. It is dated, I think I said, but I will say again, September 12, 1969, and there are copies going to all board members, Sherman& Sterling, attention of Tom Ford, Esq., and Lybrand Bros. and Montgomery.

Q Mr. McDonnell, when you sent a copy to all board members, what board were you referring to?

A The board of directors of McDonnell & Company.

Q Who did Sherman & Sterling represent?

A Sherman & Sterling were the counsel for McDonnell & Company.

Q That's a law firm; right?

A That's a law firm.

Q And who were the -- who was Lybrand Bros. and Montgomery?

A They are the Certified Public Accountants that certified to the statements of McDonnell & Company.

Q Now, as a result of that letter was the B debenture paid to the trustees?

A No, sir, the B debenture was not paid.

A I believe yesterday we marked as one of the exhibits a claim that you as trustee, and the trustees, signed and submitted to Delaware, the court in Delaware for payment after McDonnell & Company went into receivership. Was that claim allowed? And I show you document marked 19B for identification.

If I can take it away after showing it to you becaus I don't have any copies, and I will show it to counsel.

I will offer that in evidence as Exhibit 19B, after you answer.

A Yes, sir, it was allowed.

MR. BEEBE: I will offer this as the next exhibit.

THE COURT: Any objection?

MR. STEIN: No objection.

(Plaintiffs' Exhibit 19B received in evidence.)

Q Now, the claim which we marked as 11 in evidence yesterday was a claim for $318,622.97 plus interest; is that right?

A Yes, sir.

Q And how much did the receiver, Bruce Stargatt, allow in Exhibit 19B when he allowed this claim?

A The whole amount, sir.

Q That is what?

A $318,622.97.

Q Did he pay it?

A No, sir.

Q Did he pay any of it?

A No, sir.

Q Now, there were two trustees that you said signed the September letter notifying McDonnell & Company about the Bondebenture, what it says in here in Exhibit 19, "Please be advised the trustees never authorized," and so on, that is, your mother and yourself. Is there any reason why your mother is also not here to testify as a trustee?

A My mother had a serious heart attack about six or eight months ago and she has had both of her eyes operated on for the cataracts. So she is not physically able to testify or appear here today.

Q You have heard testimony about Margaret McDonnell

in January, 1969,and her testimony about your mother in January, '69, concerning subordinated loans to McDonnell & Company. Were you approached, either as an individual or as a trustee, in January or 1969, or February or any time around then,to make such subordinated loans, loans of stock or anything of value to McDonnell & Company?

A No, sir.

Q Were you ever an official or did you ever take a position at McDonnell & Company in the New York office?

A I was asked by my sister Margaret and my sister Ann --

MR. BROOKS: Your Honor, the question can be answered yes or no.

THE COURT: Yes, I think it can.

Did you ever take a position in the New York office?

THE WITNESS: Yes, sir.

THE COURT: Next question.

Q What was the position?

A I was asked by my sister Margaret Mary--

THE COURT: No, what position did you take?

Q Did you actually take one?

A A representative position.

Q I'm sorry, I didn't make it clear for you. I meant did the company -- you have testified you became a manager of

the Detroit branch in May. Then when you came to New York and you testified what you did when you came to New York. Now, did the company ever give you some official position here, like vice president or anything like that?

A No, sir, nothing like that.

Q That is what I meant.

A I was a vice president of the firm because I was a Detroit manager, and that went with it.

Q But nothing that involved official duties in the New York office?

A I had no official capacity in New York.

MR. BEEBE: May we approach the bench for a moment, your Honor?

THE COURT: All right.

(At the side bar).

MR. BEEBE: I'm just about done with this witness. I have one bulky -- what would you call it? -- chart drawing that I would like to show to him. We can do that now or if you want to take a recess, I can then bring it in and set it up.

THE COURT: Go right ahead with it.

MR. BROOKS: While we are here, your Honor, when Mr. Beebe is done, if counsel are agreed, subject to your concurrence, that we would resume the reading of the cross-examination of Mrs. McDonnell which we interrupted yesterday. Miss Lichstein and Miss Solomon would read in passages from Mrs. McDonnell's transcript as if in cross-examination

We were going to do this first and then cross-examine this witness.

THE COURT: I think you better go through with this man first.

MR. BROOKS: All right, your Honor.

MR. BEEBE: I can also say just to give you a road map of what is coming today, that after that, after we are done with cross-examining him and reading the cross of Mrs. McDonnell I think you ought to mark in some exhibits pertaining to her which I have no problem with.

I will then be calling the first exchange witness, a fellow by the name of Andy McElroy.

MR. BROOKS: He is scheduled to be here at 2 o'clock. I think that looks realistic now.

THE COURT: All right, let's see where we go.

MR. BROOKS: Maybe we can do it all at the same time. When Miss Lichstein begins reading Mrs. McDonnell's transcript we would like to request an instruction as to what it is and the fact that she will be reading some interrogatories and the description of what the interrogatories are. You described yesterday the role of a deposition. May we have a description as to interrogatories?

THE COURT: Wait a minute. These interrogatories go beyond the deposition.

MR. BROOKS: That's right.

THE COURT: Those theoretically will come in on your side of the case. This is not a reading of the deposition.

MR. BROOKS: It may be easier to get them in now. Plaintiff has no objection.

THE COURT: If you have no objection, that is one thing.

MR. BEEBE: Let me think about that, your Honor.

THE COURT: All right.

(In open court)

Q Now, Mr. McDonnell, we have tried to repair a chart to show the various claims here and how they are set forth in the complaint. I would like you to identify them, if you will. I don't know if you can see that far. Can you?

A Yes, sir.

Q Let's start with yours. Can you tell us where on your chart is your claim?

A It's the fourth one down, James F. McDonnell, Jr., approximately April or May 1969, and the amount is $20,718.

Q Plus interest?

A Plus interest.

Q You have also testified this morning about your role as a trustee and the claim about the B debenture, the non-payment of that. Which number is that on the chart and where does that fit?

A It's the trust of James F. McDonnell, Sr.

Q Is that No. 3?

A That is No. 3.

Q And you have also heard testimony about Margaret's claim. Which number is that?

A No. 1.

Q And your mother's claim?

A No. 2.

Q And what is the 5th claim?

A That's the preferred stock which is owned by my father's trust. That has not been discussed.

Q Were you trustee of that?

A Yes, sir. That's part of the assets of his estate. I'm trustee of it.

Q Was that preferred stock in the amount of $79,700 in your father's trust in 1968?

A In 1968, yes, sir, it was.

Q So, before the transactions and things we have been talking about?

A Yes, sir.

Q I notice it doesn't have a date on the chart here but it was there at all times?

A Yes, sir.

Q Was that last item also the subject of a claim in the Delaware court?

A I believe it was, sir, yes.

Q And was that claim paid?

A No, sir, it was not paid.

Q It remains unpaid?

A Yes, sir.

MR. BEEBE: I think we should mark this in some way.

(Plaintiffs' Exhibit 31 was marked for identification)

Q Does that represent all the transactions that we have discussed so far?

A Yes, sir.

MR. BEEBE: I offer that in evidence as the next exhibit.

THE COURT: It will be received as an aid to the Court. It's not proof of anything. It's just a statement, summing up the claims made by the plaintiff.

Are we going to hear proof with regard to No. 5 on there?

(Pause)

THE COURT: At this point I am not aware that there is anything in the record as to how that comes to in this case.

MR. BEEBE: It's part of the complaint, your Honor.

THE COURT: I know it is, but I haven't heard

any proof of it. I am asking whether we are going to hear proof on it, because otherwise it should not be an item on that exhibit.

MR. BEEBE: Your Honor, we have just now had Mr. McDonnell testify, I believe, that as a trustee it was part of the trust assets, that a claim was filed, that it was there during all the period in question -- I'm not sure I made that last point clear, whether that last bit of testimony came out.

Q You said that the preferred stock was in the trust in 1968. Was that preferred stock of McDonnell & Company?

A Yes, sir.

Q Did that stock continue in the trust unchanged throughout 1968, 1969 and up until March 13, 1970, when the company went into liquidation?

A Yes, sir, it did.

Q And I take it that the claim in Delaware pertaining to that stock, was that --

THE COURT: What happened to it?

MR. BEEBE: It was unpaid. Itwas claimed in Delaware.

THE COURT: Mr. Beebe, we are litigating something here that I haven't heard a word of proof about

from this gentleman or anybody else and it's now found its way into a chart that's in evidence as an aid to the Court.

Gentlemen, come around to the side.

MR. STEIN: I would like the record to show, your Honor, on behalf of the receiver we object to the chart with that claim that your Honor is just referring to.

THE COURT: That's what I thought I was investigating.

(At the side bar)

THE COURT: Now, Mr. Beebe, is there going to be some claim that somebody took this out of the portfolio and put it into the firm's assets improperly? In other words, you have to have some unauthorized use here to charge somebody with it. You haven't done anything except say that there was preferred stock and it hasn't been paid. We have no proof whatever having to do with where it was or who did anything with it or why it's claimed.

MR. BEEBE: It was preferred stock of McDonnell & Company, just like his common. It was stock of the company.

THE COURT: Right, it was preferred stock in

the father's trust.

Now, what happened to it? Why does it get into this case?

MR. BEEBE: Because 1968 when the stock exchange was failing in its regulatory function, this stock and all other stock in McDonnell & Company was going down in value. In fact, it was going down to zero as a result of the stock exchange's mis-function, non-feisance and malfeisance. The ultimate result is that the stock became worthless.

MR. BROOKS: That may come later. At this point I object to it being on the chart until Mr. Beebe claims there is a claim inthe case that's supportable.

MR. BEEBE: I tried to do it with Mr. McDonnell right now. I will put in evidence to document that. It's really a simple claim and not anything complicated for $79,000. But I put in Mr. McDonnell's personal testimony on personal knowledge as a trustee as to what happened with that asset that was under his tutelage.

What happened to the asset --

THE COURT: He didn't testify to that, which would have cleared up a lot of things.

MR. BROOKS: Even if he did, your Honor,

there is no proof to support that being before the jury at this point.

MR. BEEBE: Mr. McDonnell is proof, I submit. He was a trustee and it was under his charge.

MR. BROOKS: You have offered no proof of a wrong yet.

THE COURT: Let me ask you this, Mr. Beebe, are there more sheets of paper underneath that one page?

MR. BEEBE: That's the only one so far.

THE COURT: Because that really is not an item in evidence.

MR. BEEBE: I will put it in evidence right away.

THE COURT: It's in evidence, but it's not an evidentiary item. It's like the bottom line on the complaint.

MR. STEIN: Perhaps it ought to be marked for identification.

THE COURT: I took it as an aid to the Court and there is no harm in that.

MR. STEIN: Your Honor, may I ask you, would the Court instruct the jury that the claim for the preferred stock is not being made against the receiver apparently?

THE COURT: I don't know who it's being made against. That's why I asked you to come up to the side bar.

MR. STEIN: I just heard you say, Mr. Beebe, that the stock exchange by virtue of alleged non-feisance and other wrongdoing caused the stock to become value-less.

MR. BEEBE: There is also a claim against McDonnell & Company and since you represent the receiver, you are certainly answering for McDonnell & Company for that claim.

THE COURT: I satisfied my curiosity about claim 5 and we will go forward from there.

MR. LOFLIN: I gather this item has, No. 5, has been in there since 1958, the death of James McDonnell.

MR. BEEBE: It sounds plausible to me. I don't know.

THE COURT: Talk about this when you have some free time.

(In open court)

THE COURT: Ladies and gentlemen, this exhibit, 31, is not an item of evidence in the case, but it's merely a statement, an aid to the Court and jury as to what the claim is.

Claim No. 5, in my judgment, is not as yet competently before you. As a consequence, I am only permitting claim No. 5 to be stated there on that piece of paper, Exhibit 31, subject to proof being offered on it which we lawyers say, taking to connection. In other words, we will hang on here and see what the proof shows on that item No. 5.

All right, go ahead.

Q Let's proceed, Mr. McDonnell.

Addressing ourselves to No. 5, what company was that preferred stock in?

A McDonnell & Company.

Q Could you explain to the jury what preferred stock is?

A Preferred stock is different from common stock in that it's generally a dividend is paid on the preferred stock before it's paid on common stock. Also, in many cases in the event of liquidation of a corporation the preferred stock is entitled to money prior to any consideration being given to the common stockholders. That's the best I can do with that.

Q Thank you.

Now, there was a liquidation of McDonnell & Company, and you have testified that this preferred stock had been in the trust, for which you were a trustee, through 1968-69, up until the time of liquidation, is that right?

A Yes, sir.

Q At the time of the liquidation, were any payments made on the preferred stock?

A No, sir.

Q Did the preferred stock have any value

after McDonnell & Company was liquidated?

A No, sir, it had no value after the company was liquidated.

Q Does it have any value now?

A No, sir.

MR. BEEBE: Would this be a good time to recess, your Honor?

THE COURT: Have you completed your direct examination?

MR. BEEBE: I am virtually through. I am still looking to see if I have any documentatoin on this particular item which I could put in now or on redirect, if I have the Court's permission. In other respects, I am completed with the direct.

THE COURT: All right, we will take a 15-minute recess at this point.

MR. BROOKS: Your Honor, if counsel has a document I think it should go in on direct and not wait for redirect.

THE COURT: I am agreed. That's why I am taking a recess so it can be located and put in on direct.

(Recess)

(In open court; jury present)

THE COURT: You may continue.

DIRECT EXAMINATION CONTINUED

BY MR. BEEBE:

Q Mr. McDonnell, just to wind up this discussion of questions on tranaaction No. 5, did McDonnell & Company send out a letter to all shareholders, which would include both preferred and common, shortly after the company went out of business, concerning the value of the shares?

A Yes, sir.

Q I show you a letter dated April 1, 1970, on the letterhead of McDonnell & Company, addressed to shareholders of McDonnell & Company, Inc., and ask you if that, without the handwritten materials on it, is the document. Is that the document?

A Yes, sir, it is.

MR. BEEBE: I offer that in evidence without the handwritten materials.

Q I gather the handwritten materials were not on it when you received it?

A No, sir.

(Plaintiffs' Exhibit 32 was marked for identification)

THE CLERK: Any objection?

MR. STEIN: No objection.

MR. BROOKS: Your Honor, there is a good deal of handwriting at the bottom.

THE COURT: That is not included.

MR. BROOKS: I have no objection to the typewritten portion.

THE COURT: Very well.

(Plaintiffs' Exhibit 32 was received in evidence)

MR. BEEBE: May I read a portion of that, your Honor?

THE COURT: You may.

(Mr. Beebe read to the jury from Plaintiffs' Exhibit 32 in evidence)

Q As trustee then, was one of the claims in the original complaint in this action for the $79,000 amount?

A Yes, sir, I believe so.

MR. BEEBE: I don't think we have to mark this in evidence. It's the original complaint.

Q Is that it, the third claim?

A Yes, sir, it is.

Q Did there come a time when your attorneys requested the Delaware court for permissionto withdraw that claim from Delaware and pursue it here?

A That's my understanding, sir, yes.

Q And did the Delaware court issue an order permitting that?

A I believe -- that is my understanding, sir, yes.

MR. BEEBE: I have a copy of that order, and I offer it in evidence. I only have one copy.

(Plaintiffs' Exhibit 32 was marked for identification)

MR. STEIN: Your Honor, this appears to be a conformed copy of an order of the Court of Chancery in the State of Delaware. Subject to some acceptable way of verifying this, I have no objection. We are all aware of the procedure under the federal rules concerning the certification of documents when they are being introduced in evidence in another court. The Delaware court is certainly another court, and I feel very reluctant to make a technical objection such as this, but it wouldn't have been a problem of great magnitude to have gotten a certified copy of this document.

THE COURT: Let me see it.

(Document handed to the Court)

THE COURT: Let me ask you this: Is there any question, is anybody going to argue, putting entirely

to one side the merits -- is there any question that this claim is litigatable here?

Then the exhibit becomes irrelevant, and I will sustain an objection to it.

MR. BEEBE: I didn't hear the answer to your question.

THE COURT: You saw heads shaking at defense counsel table, which I take it to mean there is no question that it's litigatable here.

MR. STEIN: That is correct. I will concede that.

MR. BEEBE: Then I don't need this.

That concludes my direct examination, your Honor.

THE COURT: Very well.

Mr. Stein, are you the first cross-examiner, or Mr. Brooks?

MR. BROOKS: We have re-arranged our order today, if you have no objection.

THE COURT: All right.

MR. BEEBE: I do have an objection, your Honor. I don't understand what possible reason there could be for rearranging the customary order of cross-examination.

THE COURT: I will permit it.

CROSS-EXAMINATION

BY MR. BROOKS:

Q Mr. McDonnell, in connection with your purchase of the voting stock of McDonnell & Company, did you seek any information from the New York Stock Exchange about the condition of McDonnell & Company?

A No, sir, I did not.

Q Did you receive any information either over the telephone, in a writing, or in a personal meeting?

A No, sir, other than the fact that I was advised that I must buy the stock by the New York Stock Exchange representatives.

Q Who told you that at the New York Stock Exchange, thatyou must buy the stock?

A Mr. McKay, who was McDonnell & Company's representative, and I made independent research myself.

Q Where?

A In the rules and regulation -- this goes back some time, so you will forgive me if I can't come out and tell you exactly.

Q I understand.

A But in the rules and regulations of the New York Stock Exchange after Mr. McKay told me I must buy

this stock, this is a requirement of the New York Stock Exchange, I read the rules and regulations. They were extremely complex, but I did conclude that this was in fact a requirement of the New York Stock Exchange, that I buy it.

Q You talked to nobody else on this issue but Mr. McKay, is that right?

A No, I talked to Mr. Crowe, who is the house counsel for McDonnell & Company.

Q Anybody else?

A No, sir.

Q Neither Mr. Crowe nor Mr. McKay were working for the stock exchange at the time, were they?

A No, sir, they were not.

Q How about the debenture that you have spoken of, which is reflected on your chart there? Did you speak to anybody at the stock exchange concerning the roll-over of that debenture, or your pursuing your claim in respect to it?

A You have two questions there, sir. The first question is, did I talk to anybody?

Q Yes. Why don't you answer that one first?

A I must say that I did not talk to anybody, no.

Q Now the second question.

A Would you repeat the second question, sir, or could the reporter so do.

MR. BROOKS: He could do it better than I.

(Question read)

A The answer to the second part of the question is likewise no, I did not speak to anybody directly at the New York Stock Exchange.

Q Did you address a letter or memorandum to anybody at the New York Stock Exchange concerning the debenture?

A No, sir.

Q I take it you received no writing from the stock exchange concerning the debenture?

A No, sir, they did not advise the trustees of anything.

Q Let's take the preferred stock, which is the last item on that chart.

A Yes, sir.

Q Did you have any communication with anyone at the New York Stock Exchange orally or in writing with respect to that preferred stock?

A The answre is likewise no, sir.

Q Do you have the exhibits before you, Mr. McDonnell?

A I have a group of exhibits here, yes, sir.

MR. BROOKS: Mr. Beebe, does Mr. McDonnell have the exhibits that were introduced yesterday?

MR. BEEBE: Some of them. Which particular one do you have in mind? I will see if I can help you.

MR. BROOKS: I am interested in hks allied membership application first.

THE WITNESS: I do not have that here in front of me, no, sir.

MR. BEEBE: The one addressed to the New York Stock Exchange signed by him?

MR. BROOKS: Yes.

MR. BEEBE: I believe that is No. 13, and I am handing it to the witness.

Q Do you have that in front of you, Mr. McDonnell?

A Yes, sir.

Q Would you take a look at the page where it shows your employment?

A I take it we are referring to page, unnumb ered page 3?

Q It is item No. 9. I am not sure what page it is. Do you see item No. 9 there, the long list of

positions that you have held?

A I am sorry, sir. If you would be good enough to point it out to me, I am not sure -- I want to be talking about the same thing that you are.

Q This is it. You have it?

A There seem to be eight items there.

Q It seems you have a rider superimposed over your page 9.

A Yes, sir.

Q Let me give you one that shows the rider.

MR. BROOKS: You have no objection, Mr. Beebe?

MR. BEEBE: Is this in evidence?

MR. BROOKS: It is not, but it probably should be.

MR. BEEBE: Why don't we put it in?

MR. BROOKS: This was the condition it was marked at your deposition, Mr. McDonnell.

MR. BEEBE: I think it is in evidence, Mr. Brooks.

MR. BROOKS: But the rider obscures certain material is my only point, when it was Xeroxed.

MR. BEEBE: I have no objection to it coming in as you have it there if it's otherwise the same as the

exhibit. Why don't we mark it as 13A?

MR. BROOKS: That is perfectly satisfactory.

THE COURT: Very well. Plaintiffs' Exhibit 13A was received in evidence.

(Plaintiffs' Exhibit 13A was received in evidence)

Q Look at 13A, item No. 9, and I will borrow 13 while we talk about it.

A All right.

Q When Mr. Beebe was questioning you about your employment history, he left out some items that I would like to consider with you.

MR. BEEBE: I object to that. I didn't leave out anything.

THE COURT: Sustained. Put a question.

Q Before you went into the service, did you have any employment?

A Yes, sir.

Q With whom?

A With the Bank of New York.

Q What position did you hold?

A I was arunner, which means a messenger boy, and then I was a clerk who counted securities, and then just befoer leaving there I was promoted up to the

securities department, research division.

Q On Exhibit 13A you will see that you described that position as security analyst. Is that an accurate description?

A If I had stayed there I probably would have wound up as a security analyst as such, yes, sir.

Q Were you that at the time you left?

A I hardly think so. I would like to think that -- I would like to think that I was, but I wasn't there that lone. I volunteered for the Army just about that time.

Q You have answered the question of what position you held by filling in the words "security analyst"?

A Yes, sir, I did.

Q I want to know whether that is a true statement or untrue.

A It's a true statement, Mr. Brooks.

Q Your service at the Ford Motor Company, I believe you mentioned after the war --

A Yes, sir.

Q -- what time did you spend at the Ford Motor Company?

A From 1945 until 1949, I believe.

Q What position did you hold at the Ford Motor Company during that time?

A I went through their training program, which took about a year. After that I went into their financial department.

Q How would you describe the position which you held in their financial department?

A My job essentially consisted of comparing the performance of the Ford Motor Company with its two major competitors.

Q You have described the position which you held at the Ford Motor Company on Exhibit 13A as financial analyst. Is that a true description of the position after you emerged from the training program?

A Within the confines of my job description that I have just given that is the case, yes, sir.

Q In connection with analyzing the performance of Ford and its competitors, did you have to analyze financial statements?

A Yes, sir.

Q There was a financial supplement that accompanied your allied membership application, was there not, at the time you submitted it?

A Mr. Brooks, I am not sure. I feel, however,

that this is only a very small part of the application that I was required to furnish the New York Stock Exchange.

Q Let me show youwhat might be another part, which we have pre-marked as Exchange Exhibit C.

Is that a portion of the application as you recall it?

A Mr. Brooks, this does have my signature on it, so I have to assume that it was, yes.

MR. BROOKS: I offer that in evidence, your Honor.

MR. BEEBE: Was this previously marked at a deposition?

MR. BROOKS: Yes.

MR. BEEBE: No objection.

(Defendant New York Stock Exchange Exhibit C was received in evidence)

Q After you submitted 13, or 13A, which was your application, describing among other things, your employment, did you have occasion to add to the list of positions of employment that you specified?

A Yes, sir, I did.

Q Let me show you what has been pre-marked as Exchange Exhibit B.

I ask you if Exchange Exhibit B is a copy of a letter which you sent supplementing the employment information which you had furnished on Exhibit 13?

A Yes, sir, it is.

Q How did you come to overlook these positions?

A Well, sir, I have been in a great many businesses, and somehow or other I overlooked those three positions or undertakings, and I had been told that my application had to be precisely accurate. So in reviewing my application -- and it was a very, very thick group of papers -- I noticed that the jobs had not been described, so I put them in.

Q Can you tell the jury what these positions are? I think you have listed some of the ones before?

A Yes, sir, I can.

MR. BEEBE: Is this going to be offered in evidence? It speaks for itself.

MR. BROOKS: I do offer it, your Honor.

MR. BEEBE: No objection.

(Defendant New York Stock Exchange Exhibit B received in evidence.)

MR. BROOKS: The only reason I asked is yesterday Mr. McDonnell did describe a number of positions and I thought I should make it complete.

A I will answer the question. The first item states from 1961 to the present, Max Curtis Ford Truck, Inc.

Now, I have a corporation called Max Curtis, Incorporated, of which I am the principal stockholder. It is a Ford automobile dealership. We have a wholly owned subsidiary called Max Curtis Ford Truck. So I omitted to put in this subsidiary company.

The next item is a Max Curtis Leasing Corporation. The same applies there. I overlooked we had a separate organization leasing vehicles.

The third one I overlooked, because it was painful to me. It was called Don Uphoff Ford, and it went broke, and I suppose I eliminated it for that particular reason.

Does that answer your question, sir?

Q Yes.

When you were growing up around the McDonnell household would you have described your father as proud of

his business, McDonnell & Company?

A May I borrow from the testimony of -- no, I suppose not. He is a humble man. I think he was happy with his business, yes.

Q Was he proud of it?

A He was a humble man. He did not express pride, sir.

Q Let me try to refresh your recollection in this regard. Do you recall my taking your deposition in this lawsuit a year or so ago?

A It was a long time ago, but I do recall it quite well.

Q Do you recall on page 8 of the transcript of that deposition answering the question "Well, my father was a very proud man of his business, so obviously it was the greatest business in the world to him."

Do you recall that?

A You have refreshed my memory, sir, yes.

Q And that is your recollection today, I take it?

A I have to accede to that, yes, sir. That's the statement I made.

Q Let me continue along the same line, if you will.

A Yes, sir.

Q "It was called McDonnell & Company after him,

was it not?"

MR. BEEBE: Objection. I don't think this is the way to conduct an examination out of another deposition if it is not to refresh his recollection any further. He can just examine him right here. He doesn't need the deposition for that.

THE COURT: Sustained.

Go ahead.

Q Who was the firm of McDonnell & Company named after, Mr. McDonnell?

A My father.

Q And you were named after your father, were you not?

A Yes, sir.

Q And you have a son that is named after your father, do you not?

A No, sir, he is named after me.

Q But he is called James F. McDonnell III, is he not?

A Yes, sir.

Q And he has worked at McDonnell & Company, has he not?

A No, he has never worked there.

Q He has not?

A No.

Q Let me try to refresh your recollection. I have here an application for employment of James Francis McDonnell III at Bache & Company. In that it recites that in 1967 James Francis McDonnell III worked at McDonnell & Co. as an assistant to a broker.

I ask you to examine this, consider the signature, and tell me if it refreshes your recollection.

A Oh, my gosh, yes, he worked, he did, in the summertime. I have seven children and I can't really keep track of all of them. But that is the case, he worked in Detroit in the summertime as a clerk, I think, in their filing department.

Q I believe it said Paris.

A Oh, right.

Q Would you like to check that?

A Right. He went to Europe for the summer and they gave him a job in the McDonnell & Company Paris office, that's correct.

Q And he would be the third generation of James Francis McDonnells at the firm, would he not?

A Yes, sir, that's correct.

Q I would like to hear a little more about your employment at McDonnell & Co. in 1945. Can you tell me to whom you applied to obtain thejob?

A In 1945, that would have been right after I came back from the Army, I came home to my parents' house and my father said "What are you going to do?" And I said "I don't know. Maybe I will go down to your place."

Q You had been a captain in the service, had you not?

A Yes, sir. I came out as a captain.

Q How old were you?

A Oh, my gosh. 30 -- about 30.

Q Did you go down to McDonnell & Co. and begin work?

A Yes, sir.

Q How long did you work?

A I would say six months or less.

Q What salary did you draw?

A I didn't draw any salary.

Q Tell me why not?

A When I came --

MR. BEEBE: Objection, your Honor.

THE COURT: How is this relevant, Mr. Brooks?

MR. BEEBE: It is 1945.

MR. BROOKS: I would offer it to prove James Francis McDonnell had a falling out with his father --

MR. BEEBE: Objection to arguing this in front of the jury.

THE COURT: Come up to the side bar, please.

(At the side bar.)

THE COURT: Let's assume he had a falling out with his father in 1945.

MR. BROOKS: Yes.

THE COURT: How does that bear on any issue that we are trying here?

MR. BROOKS: He was supplanted as the one who was going to inherit the firm by his brother Murray. He went to Detroit, and thereafter he has been very bitter and attempted to undermine Murray's position at the firm, and this lawsuit is just another in a series of maneuvers to attack what Murray has done while in charge of the family firm which he should have ended up with but did not.

MR. BEEBE: Your Honor, I find that outrageous. I think that is the biggest, smellingest red herring I ever heard in my life. I just don't see how that fits into the legal theories under the securities laws or what it has to do with the issues that have been pleaded and placed before the jury.

MR. BROOKS: It goes to the motive of the witnesses. We have argued in our defense this is really a family squabble, and has nothing to do with fraud.

THE COURT: I will permit it. It goes to the motive and bias of the witness.

(End of discussion at the side bar.)

(In open court. Jury present.)

MR. BROOKS: Would you read the last few lines, Mr. Reporter, so the jury can pick up the thread.

THE COURT: I believe he testified he didn't receive any pay for that period, and you asked him why not. It was at that point that there was an objection.

Q Can you answer that, Mr. McDonnell?

A The why not?

Q The why not.

A Well, my father had decided that he would pay me out of his own pocket. I guess he figured that I wasn't -- well, he didn't want to put me on the payroll, it might have been embarrassing to him because I was his son, or something like that, but he decided to pay me out of his own pocket, and I refused to accept themoney.

Q Did your father say to you that he didn't think you were worth paying out of the firm payroll?

A No, sir, I don't ever recall his saying that. I inferred it from the fact that he wouldn't put me on the payroll. I was given cash and everybody else got a check.

Q Let me refresh your recollection. Do you recall at your deposition on page 12 answering this series of questions:

"Can you tell me how that employment came about?

"A I didn't have a blasted thing to do, and I went to work for my father for free."

MR. BEEBE: We have a reading problem. The answer was: "I guess I didn't have a blasted thing to do." He left out "I guess."

MR. BROOKS: I'm sorry.

Q "I guess I didn't have a blasted thing to do, and I went to work for my father for free.

"Q What do you mean for free?

"A At no compensation. He didn't think that I was, you know, worth paying anything."

Do you recall giving those answers to those questions?

A Yes, sir, I do, and that seems to be precisely what I have said here.

Q It was then that you left the firm?

A Shortly thereafter, yes.

Q Was it a result of that situation regarding who was going to pay you?

A No, sir. I was offered a job in Detroit.

Q Who offered the job?

A Henry Ford.

Q How did you know him?

A I had known him for a long time, and he was married to my sister.

Q At the time you left the firm were any of your brothers employed there?

A Mr. Brooks, I don't recall. I don't think so.

Q Do you recall subsequently that any of your brothers became employed at the firm?

A Yes, they did.

Q Can you tell me which ones became employed at McDonnel & Co.?

A My brother Murray, of course, my brother Charles, my brother Gerard, and my brother Morgan, and my brother Sean, who has since died.

Q Mr. McDonnell, would you recognize your mother's signature?

A I believe so, sir, yes.

Q Do you recognize your brother Charles' signature?

A No, sir, I do not think so. I might, but I don't think so.

Q Let me show you a document called Allied Member or Non-Member Application in the New York Stock Exchange for the approval of Anna Murray McDonnell as a subordinated lender, and ask you if that bears your mother's signature. It has been pre-marked as Exchange Exhibit E.

Attached to it, I may add, is a financial supplement to the application, both of which are dated February 27, 1961.

A The signature on unnumbered page 5 is my mother's signature.

Q And how about the last page, Mr. McDonnell?

A Yes, sir, that is my mother's signature.

Q And below it, do you recognize your brother Charles' signature?

A No, sir, I'm sorry, I do not. I will not testify that that is his signature.

Q Does it have any familiarity to you?

A No, sir, I can't say that I really remember seeing his signature, so it would be unfair for me to say that I thought, you know, that that's his.

Q Is your brother's name Charles E. McDonnell?

A Yes, sir, it is.

MR. BROOKS: Your Honor, I offer this in evidence as an application of Anna McDonnell to become an allied member of the New York Stock Exchange -- excuse me, as an allied membership application for the post of subordinated lender.

MR. BEEBE: I object. As I understand this one, it is 1961, long before anything involved here. I think

that you handed me one that is later on that you plan to offer later referring to the particular transactions involved here. Why don't we just not clutter up the record and stick with the later one?

MR. BROOKS: This shows a history.

THE COURT: Overruled. I will accept it, with the signature of Charles not being identified.

(Defendant Exchange Exhibit E received in evidence.)

Q Do you have any recollection of your mother making a subordinated loan or a lending of securities to your brother Charles in and about 1961, so that he could contribute those securities to the firm of McDonnell & Company as capital?

A No, sir. I don't believe in 1961 that I have any recollection of that, no.

Q Do you have any recollection of it today?

A Do I have any recollection -- I didn't get the question.

Q Do you have any recollection of it today, whether you had a recollection in 1961 or not?

A There was a time when my mother subordinated her account. Now, you are asking me do I recall a transaction specifically between my mother and my brother Charles, and I have to say that I have no recollection either today or

or in the past of any such transaction.

Q Let me try to refresh your recollection.

I show you a collateral agreement with the names Charles Edward McDonnell typed on the front, and appearing to bear the signature of Anna M. McDonnell and Charles E. McDonnell on the last two pages, which has been pre-marked Defendant Exchange Exhibit F.

MR. BEEBE: For identification.

MR. BROOKS: Yes, sir.

Q I ask you if that refreshes your recollection.

A I have never seen this document before this second.

Q I didn't ask that. I asked if--

A No, sir, it doesnt.

Q Would you look at the signatures, sir, and tell me whether you recognize your mother's signature on the last two pages.

A I have not seen my mother's signature on this document.

Q Take a look at the second to last page, sir.

A Yes, I am looking at the second to last page. There is a signature, but it is absolutely illegible.

Q You can't make that out?

A No, sir, I cannot.

Q How about the signature below that signature?

A That signature purports to be Charles E. McDonnell.

Q How about the last page entitled "Schedule A." Do you recognize those signatures?

A There are no signatures on this page, sir. At least nothing legible.

Q That may be the fault of the Xerox process. Do you see places for signatures?

A Yes.

Q You cannot make them out?

A No, sir.

Q Look at the schedule of securities above "Schedule A." Do you recognize those securities as securities held by your mother in and about that time in those amounts?

A I recognize those as corporations in the United States.

Q Did your mother hold shares in those corporations?

A I do not know, sir.

Q You have no idea?

A No, sir. I take it, Mr. Brooks, you are talking about 1961 here, and I'm sorry I cannot say that I knew anything about that.

Q I understood your mother did not sell or purchase securities in her account; is that your understanding?

A Did she so testify, sir?

Q It is my understanding. I don't know where I got it from. I'm asking if it is yours.

A You are asking me to suppose. I would suppose that is the case, sir.

Q You don't recognize those securities?

A No, sir.

MR. BEEBE: Excuse me, do you mean recognize them as hers?

MR. BROOKS: Yes.

Q When did you first become aware that your mother had made a subordinated loan to McDonnell & Co.?

A Mr. Brooks, I thin k it was in 1962 some time.

Q Tell me what you recall about that transaction.

A Well, in 1962 she called me up and told me that she had been requested to subordinate her account. Then I discovered that there was a reason for that. One of McDonnell & Company's customers had given orders to McDonnell & Co. to purchase a great deal of stock in the E.L. Bruce Company. The stock delcined very substantially, and this customer was unable to pay for it, and he left the country and went to Brazil. So that McDonnell & Company was

left on the hook for this. I guess that they required capital at that time because of this man going off to Brazil. This was the reason that she gave me for the subordination or the request to subordinate her account.

Q But as far as you know that's the first time she subordinated her account?

A Yes, sir, as far as my direct knowledge that is so.

Q Will you take a look at the financial supplement of your mother's application dated February 27, 1961, which is the last two pages to her 1961 membership application.

A Membership application. Is this the document you are talking about (indicating)?

Q Yes. Please read line 7 there.

MR. BEEBE: Do you mean to himself?

MR. BROOKS: Yes, to himself.

A Just a minute, I just want to see this.

I have read line 7.

Q Now, that, in substance, says that your mother is making a subordinated loan, $450,000, to McDonnell & Company, does it not?

A Yes, sir.

Q That does not refresh your recollection?

A No, sir, in no way.

Q That is not the subordination you are thinking of, is it?

A No.

Q Well, have you told me all that you can about the 1962 subordinated transaction?

MR. BEEBE: Objection, your Honor.

THE COURT: Sustained.

Q What was the name of the gentleman that had caused McDonnell & Company the financial embarrassment in 1962?

A I believe his name is Jack Sarli, S-a-r-l-i.

Q Did your mother or anyone else explain to you whether that financial embarrassment resulted in McDonnell's inability to comply with the New York Stock Exchange's capital requirement?

A No,sir.

Q You did know that the firm needed additional capital, though, did you not?

A Yes, sir.

Q Did you counsel your mother on the wisdom of this transaction?

A I believe I did, sir.

Q Can you tell me in substance what you said to her?

A I told her I did not think that she should do it, and I feel that my reason for saying it --

THE COURT: What did you tell her?

THE WITNESS: I told her not to do it, sir.

Q Did you tell her the reasoning behind your conclusion that she should not do it?

A Yes, I think I did.

Q Tell me what that was.

A Well, I tried to explain to her that if any corporation owes you money and you subordinate, that means that you take the back seat; that practically everybody else gets paid off before you do, and it is an extremely risky kind of transaction to enter into it. No one should do it, mother.

Q What did mother say?

A I don't recall, Mr. Brooks. She may have told me she had already done it or she was going to do it. I don't really recall.

Q Did you shortly thereafter receive a copy of a letter from your brother, T. Murray McDonnell, to your mother in connection with that subordination?

A I believe so, sir. If you give it to me I can tell you.

Q I will do so. This has been pre-marked as Stock Exchange Exhibit G. It is a letter dated April 10, 1963, to Mrs. James F. McDonnell, from her son, T. Martin McDonnell.

A Yes, sir, I did receive that letter.

Q In the first paragraph of the letter,T.Murray McDonnell says, "We are all indebted to you for your unfailing loyalty to the firm and your unhesitating financial support during this difficult period."

Was that the difficulty you were referring to in respect to the financial embarrassment caused by Mr. Sarli?

A Mr. Brooks, I didn't write that sentence.

Q Did you know of any other financial or other difficulty of the firm?

A No, sir, I did not.

MR. BEEBE: Excuse me, could we mark it in evidence? I have no objection to it going in, but if it is going to be read from in the questioning I think it should be in evidence.

MR. BROOKS: I agree. I offer it.

THE COURT: Received.

(Defendant Stock Exchange Exhibit G received in evidence)

Q Do you see the paragraph numbered 1 on the front page, Mr. McDonnell?

A Yes, sir.

Q That describes the workings and applications

of the New York Exchange's capital rule. Were you familiar with those at the time?

A No, sir, I was not.

MR. BEEBE: Objection. Objection to the fact that that describes them. I am not sure it does. I don't know if that is in evidence at all.

THE COURT: Let me see the letter.

(Pause)

MR. BROOKS: Your Honor, I would be glad to qualify that as T. Murray McDonnell's as the workings of the capital rule, if that will help Mr. Beebe.

THE COURT: Why don't you do it that way.

MR. BROOKS: As amended.

Q Mr. McDonnell, the letter promises to return to your mother her subordinated securities on a scheduled basis thereafter. Did you see that on the last page?

A I see a schedule on the last page, sir, yes.

Q Which is the proposed schedule for the return of the securities, is it not?

A Without reading it except right now, I agree that it is.

Q Do you know whether that schedule was met?

A I think in part it was, yes.

Q Did you make any reply in writing or comment in

writing on this letter that was sent by your brother Murray to your mother of which you received a copy?

A I think I did, sir.

Q I will tell you what I have done, Mr. McDonnell. You have furnished to your counsel a copy of that letter and he furnished a copy to me. By the time I Xeroxed it, it couldn't be read, like the signature you pointed out before. So I have had it retyped. I am going to show it to your counsel and ask if he would consent to the retyped version being marked in evidence. It has been pre-marked H. I think it would be much easier for you to read it this way if your counsel is agreeable.

MR. BEEBE: On counsel's representation that the two are identical and subject to verification, I have no objection to that retyped verssion being used.

THE COURT: Received.

MR. BROOKS: I represent that it is as identical as I could make it trying to read the one that was furnished to me. If Mr. Beebe and counsel want to compare it against the copy once removed that they have and point out any place where I have gone astray, I would be appreciative if they can do so.

(Defendant Stock Exchange Exhibit H received in evidence.)

Q This copy is not signed. I take it this was your copy that you retained and the original was sent signed to your mother?

A That's correct.

Q Paragraph 2, numbered 2 of this letter, you say, "No assurance and no representation is made which would preclude a future repetition of the circumstances or events which force the firm to borrow so great a sum from you and others in order to guarantee its continuance."

Were you referring to the circumstances you described of the embezzlement or default of Mr. Sarli?

A Yes, sir.

Q The last paragraph on the first page reads, "For my part, I am no less apprehensive about your financial security now"--

A Your future financial security.

Q --"than I was at the time of our meeting in New York almost three months ago."

Can you tell me what the subject of that meeting was three months ago?

A Yes, sir. The repayment schedule, I believe, was the subject of the meeting. I just didn't want her to get herself in the position where she put this money in and at risk and that it would stay there for an indefinite period

of time and I wanted some assurances that she would be able to get her money back again.

Q Did you receive any such assurances other than you have received to date in the form of Murray McDonnell's letter?

A No, sir, this is it.

Q When you described to your mother the riskiness of a subordinated transaction, did she indicated that she knew about the riskiness of the transaction?

A No, sir.

Q Did she indicate that she did not know about the riskiness?

A I don't believe so, sir, no.

Q She just listened, I take it?

A She heard me, sir.

Q Have you ever heard it said, Mr. McDonnell, that your mother could never refuse a son when he asked her for help?

A Have I ever heard that? Yes, sir, I have heard that because I think that after or just fairly recently I heard her deposition being read here.

Q And that's where you heard it for the first time?

A I can't swear to that, sir, but that is the most recent.

Q Do you agree with it?

MR. BEEBE: Objection, your Honor.

THE COURT: Sustained.

Q Now, did there come a time when your mother again advised you that she had been approached to make a subordinated transaction to McDonnell & Company?

A A second time, sir?

Q Yes, sir.

A Yes, sir.

Q When did that come?

A 1969.

Q And how did you come to learn of it?

A She called me and told me.

Q Do you recall the date?

A No, sir, I do not recall the date. It must have been January.

Q Let me try to refresh your recollection, Mr. McDonnell.

Mr. Beebe, do you have the original copy of Defendant Exchange's Deposition Exhibit 15? I have copies here but, again, the Xeroxing is not very good. I will show you a copy of it (handing).

If we can, we can get a better copy and I will present that, your Honor.

(Pause)

MR. BEEBE: Mine is somewhat better. You can use mine.

Q This is a letter dated January 30, 1969, addressed to your mother, and it has been pre-marked as New York Stock Exchange Exhibit I for identification.

Do you recognize that letter, Mr. McDonnell?

A Yes, sir, I do.

Q Is that your copy of a letter that was sent by you to your mother on January 30, 1969?

A Yes, sir.

Q The letter refers to a conversation yesterday. That would make yesterday January 29th, would it not?

A Yes, sir. What line are you reading from?

Q First line.

A Correct, yes.

Q "I have spent some time since our conversation yesterday reviewing my files."

Was the conversation yesterday on January 29th with your mother?

A Yes, sir.

Q Was anyone else present?

A It was a telephone conversation.

Q Oh, it was a telephone conversation?

A Yes.

Q Did she call you?

A To the best of my knowledge she did, yes, sir.

Q What did she say?

A She said "I have been asked to subordinate my account again."

Q Anything else?

A I don't really think so, Mr. Brooks. I think that's all she said. She either said "I think I have been asked to subordinate my account again," or, "I have subordinated my account again." Something of that nature.

Q What is your understanding that her subordinated account ceased to be subordinated at any time between 1962 and 1969?

MR. BEEBE: Objection. There is no foundation that he had any understanding on that subject at all.

THE COURT: You mean any knowledge.

MR. BEEBE: Any knowledge. The question was in terms of understanding.

THE COURT: Lay the foundation.

Q Mr. McDonnell, did you know whether your mother's subordinated account continued in subordinated status from 1962 to 1969?

A No,sir, I did not.

Q It could have expired as a subordinated account?

A Yes, sir, it could have.

Q It could have stayed subordinated?

MR. BEEBE: Objection. It could have done anything.

THE COURT: He is trying to explore what the witness' recollection is. Overruled.

Q Will you answer the question.

A Excuse me. Would you let me have it again.

THE COURT: Mr. Brooks, put the question again.

Q Could it have just as well, as far as you know, stayed a subordinated account during the period '62 to '69?

A Not in total, no. Because the schedule that was outlined in Murray's letter to her was in fact followed.

Now, I tracked it for a while but I didn't track it all the way through. So the only fair answer I can give you is that I don't know whether all of her subordination was returned to her or not. I think the majority of it was.

Q Let's go back a bit to Murray's letter to your mother of April 10, 1963, where he sets out the schedule on the last page. It says certain dollar amounts would be returned to your mother on various dates in '63, '64 and '65.

Do you know whether those dollar amounts were returned to your mother on or about those scheduled dates?

A Of course you are asking me now to say that on or about August 15th exactly $250,000 was returned to her.

Q I won't hold you to the penny, sir. But in general.

A In general I would say that this schedule, the earlier part of it, was followed becasue I did, as I say, track it.

Q When you left off tracking it what was left, do you recall?

A No, sir, I do not recall.

Q Let's go back to the last exhibit, your January 30th letter to your mother. You say there in the first paragraph that she will remember too well the unfortunate reasons for the original subordination.

Were you again referring to the Sarli episode?

A Yes, sir.

Q Why did you think that kind of occurrence could happen again?

A Why did I think it could happen again?

Q Yes, sir.

A If it happened once it could happen a dozen times, I suppose.

Q I see that you sent her a copy of your prior letter of May 1963 with this letter.

A That is correct.

Q What was your purpose in doing that?

A I wanted to refresh her mind as to my original objection, and add emphasis, I guess.

Q Do you keep detailed records of matters such as these, sir?

A I attempt to do so, yes.

Q Would you describe yours as a careful and prudent man in this regard?

A Well, sir, I do the best I can, yes.

Q Is the answer to my question yes?

A Yes, Mr. Brooks.

Q You say in the next paragraph, "Quite frankly, I don't think I am being unjustly critical when I say that six years is more than sufficient time for McDonnell & Company tosolve their long-term capital requirement problem and that there should be no question of your subordinating your account now."

What did you know of a long-time capital requirement problem that McDonnell & Company had?

A In one of these letters, I'm not sure whether it's this one or not, Murray wrote and indicated that he was looking for a long-term source of capital. I was merely saying here that way back in 1965 you indicated that you were going to go out and look for

long-range capital. It seems to me in all this length of time you should have found it by now. That's what I said.

Q This indicated to you that he had not?

A Correct.

Q And that long-term capital requirement problem still existed?

A Well, if they had to subordinate her account at this stage of the game, yes, sure.

Q You then continue in the third paragraph by saying, "By now you probably have surmised that I am not pleased with the present situation. Subordinating your account subjects you to unnecessary risks, no matter how slight, and raises potential future family problems too unpleasant to contemplate."

Now, were the risks any greater in 1969 in your view than they were in 1962?

A Were the risks? The risks of what, Mr. Brooks?

Q The risks that you are describing in the fourth paragraph, I presume, of subordinating money to McDonnell & Company.

A I meant it subjects you to unnecessary risks even though they are very slight in this particular

instance.

Q Did you view the risk any greater in '69 than you did in May '63 when you wrote your first letter?

A I don't believe so, Mr. Brooks. I was firmly opposed to anything that has the word subordinate in it. Subordinate to me is a no-no.

Q For anybody?

A For anybody, yes, sir.

Q Did you tell any other McDonnell family memberof your view on that?

A I don't recall, sir.

Q What did you mean by your mother's subordination raising potential future family problems too unpleasant to contemplate?

A What I meant, sir, iswhat we are going through here today.

Q There is no family member on the opposite side of the fence here today, is there, Mr. McDonnell?

A No, sir, but it involves possible unpleasant feelings between family members. I don't think anybody really wants anything like that.

Q Do you consider this lawsuit an attempt to avoid these possible family problems too unpleasant

to contemplate?

A No, sir. This is a result, not a cause.

Q You say in the last paragraph on page 1, "My motive is only to keep the record straight."

What did you mean by that? What record were you trying to keep straight?

A Sir, do you mind if we read the sentence just before that?

Q Read as much as you like.

A It says "I suppose you are wondering why I am writing thusly. My motive is only to keep the record straight," the record being the attachment to this, the other letter, the first letter. "I'm not looking for problems." I didn't want her to think that I was pulling things out of the air. "I'm trying to avoid future difficulties."

Q Why were you concerned about keeping the record straight, whose record?

A Her record.

Q Her record?

A Yes. Her record of her go-between with me.

Q What do you mean by go-between?

A Mr. Brooks, I thought I made that clear.

I had written her earlier about this same subject. I am now writing her again, and I know she doesn't keep any papers. So I am submitting a copy of my original letter along with this one.

Now, what troubles you, sir?

Q Now, I want to know why you had to worry about keeping your record straight with your mother?

A Very simple. If you had 14 children and they were all telling you something, wouldn't you want to try, if you were one of the persons telling your mother something, wouldn't you want to keep your record straight?

Q You wanted to make sure you were consistent in '63 and '69 and took the same position against subordination both times?

A I suppose so, yes.

Q When she called you was she still considering making the subordination as opposed to having accomplished it?

A I told you, Mr. Brooks, that I was somewhat unsure of whether the deed had been accomplished or whether she was on the verge of.

Q Did you ever learn subsequently whether she was on the verge of or had accomplished the deed?

A No, sir, I did not.

Q What did she say when you argued against making the subordination on the telephone?

A Well, I think she either told me that she had done it or she was going to do it.

Q Did she say why?

A I don't recall directly, no.

Q Did she make any rational defense to the arguments you raised?

A No, sir, she did not.

Q Did she make an emotional defense?

A Well, this goes back to 1969 and I can't answer that.

Q The events of 1969 are fairly important here.

A I realize they are, sir, but I cannot tell you whether she made an emotional defense.

Q Do you recall what she said at all?

A Other than the fact that she either was about to do it or had done it, I don't remember, sir.

Q And thereafter did you learn she did it?

A Yes.

Q Did you talk to your brother Murray at all at this time?

A No, sir, I did not. I think I covered that

in the last paragraph of my letter. "Incidentally, if you care to show this letter to Murray, I have no objection. I think he probably already knows my opinion on this subject."

Q What did you mean by that?

A That I was unalterably opposed to subordination.

Q Let's turn our attention to that first meeting that you testified about with your brother Morgan when he requested you to take over the Detroit office.

A We are going back to claim No. 4.

Q Well, let's just go back to the conversation you had with your brother Morgan. I think you testified it occurred in January, the first conversation.

A Yes, sir, I think it was. Maybe February.

Q Let's take a look at what you said yesterday.

Question on page 249 of yesterday's transcript:

"Q Whatwas the period of time when you had the first conversation with Morgan about the business?

"A I think it must have been January 1969. Late January, I think."

Is that still your recollection today?

A Yes, sir, I think so.

Q Now, where did this conversation take place?

A My initial conversation with Morgan took place at a restaurant in the Micigan Consolidated Gas Company building.

Q Can you tell me --

A Lunch.

Q Can you tell me whether that conversation was before or after the conversation you had with your mother on January 29 on the telephone?

A I believe it must have been after.

Q The conversation with Morgan was after the 29th of January?

A Yes. Yes, I believe so, sir.

Q Did you discuss that conversation that you had with your mother with your brother Morgan?

A No, sir,no.

Q Did your brother Morgan tell you anything about the condition of the firm of McDonnell and Company when he met with you shortly after January 29th?

A Absolutely nothing, sir.

Q Did you know at this time that Morgan was a member of the New York Stock Exchange and a seat holder for McDonnell & Company?

A Now, did I know that he was a member of the

New York Stock Exchange? Did he find --

Q One who owns a seat.

A One who owns a seat, no, I don't believe so, Mr. Brooks.

Q You don't believe you knew it?

A I'm almost sure I didn't.

Q Do you know it now?

A No, sir, I do not know it now. It seems to me if he owned a seat he would have been on the floor of the stock exchange.

Q Let me show you what we marked yesterday as Exchange Exhibit A in evidence. Do you recognize your brother Morgan's signature on the bottom?

A Yes, sir, I recognize that signature.

Q And that signature is above the description "Member," is it not?

A Yes, sir.

Q Do you know anything to the contrary of the proposition that Morgan was a member of the stock exchange on or about January 30th?

A This doesn't do me any good. This has nothing to do with me.

Q I know it doesn't have anything to do with you. We are trying to ascertain Morgan McDonnell's

status.

A If you are trying to ascertain that by introducing something thathas nothing to do with me at all, I can't tell you. All I can tell you as far as I am concerned Morgan was not a practicing member of the New York Stock Exchange, or what have you, he was not on the floor of hte exchange because he was in a restaurant with me in Detroit.

Q Mr. McDonnell, even stock exchange members have to eat.

THE COURT: We are getting argumentative, Mr. Brooks.

Q Mr. McDonnell, did you understand Morgan to be representing McDonnell & Company when he met with you?

A Yes, sir, I did.

Q Now, did he give you any documents on this date?

A No, sir.

Q How long did it last?

A The luncheon?

Q Yes, sir.

A An hour, an hour or two; an hour, yes.

Q How much of thatconversation was devoted to the

proposition that you would take overthe Detroit office?

A I would say fully half of that, three quarters of it.

Q Did Morgan say anything about business of the firm doing well, humming along?

A No, sir.

Q He said nothing about it?

A No.

Q Did he indicate whether you would be a busy man as the manager of the office, or just sitting around looking for customers?

A He said that I wouldn't be very busy, that this was not a difficult job. It was a management job only.

Q Did he tell you anything about the support you could expect from the back office of McDonnell here in New York?

A No, sir, absolutely nothing.

Q How about the second meeting you described with your brother Morgan? Do you recall when that took place?

A Perhaps a week, ten days, two weeks, after the initial one.

THE COURT: Mr. Brooks, why don't we recess

for lunch at this point?

MR. BROOKS: That is fine, your Honor.

THE COURT: We will stand in recess until five minutes of two.

(Luncheon recess)

AFTERNOON SESSION

1:55 P.M.

(In open court, jury not present.)

THE COURT: I understand you want to exclude somebody from the courtroom during the taking of the testimony?

MR. BEEBE: That's correct, your Honor. There is a witness who is next in line. I think it would be appropriate since he represents an adversary party that he should not be present.

THE COURT: Is he going to testify in any areas where he will be allegedly influenced by anything he hears anybody else say, or is this sheer record keeping? I hate to inconvenience a man and put him back in a witness room. I do that in criminal cases because the need is clearer but it is an unusual request in a civil case and it seems to me that unless you fear there is going to be some alleged poisoning of this witness' testimony by what he hears earlier I would not be inclined to do it just because he is adverse.

MR. BEEBE: I was thinking more, your Honor, just as a matter of a usual practice in the sense there are going to be a number of witnesses from the Stock Exchange and as they each come in they will be hearing what

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prior witnesses said.

I agree with you that in this particular instance I don't see any poisoning or anything like that occurring with this particular witness. In the future, though, I feel that having one stock exchange witness listen to what one of his brethern say about the same transactions could very well influence what he is going to say.

THE COURT: Are these going to be witnesses to something where credibility or recollection of a conferen is in issue?

MR. BEEBE: Very much so, yes.

In this particular instance, Mr. McElroy is the witness and in this instance I merely mention it only in terms of the formality.

THE COURT: All right. Mr. Brooks, as to future witnesses you will have to tell them that they will have to find a chair in the corridor or I will invite them to enjoy the view of the Brooklyn Bridge from the witness room, or what have you.

MR. BROOKS: Your Honor, I take it that does not apply to an officer of the stock exchange who may be a witness but is here in his capacity as the client.

MR. BEEBE: If he is going to be a witness I would press for the same treatment.

THE COURT: There are certain areas where if the man is needed to confer with you in the course--

MR. BROOKS: He is going to be my witness, not Mr. Beebe's. He is my client and wants to see how his lawyer is doing.

THE COURT: I will permit that discretion.

MR. BEEBE: That hasn't occurred yet. I don't think Mr. Bishop is here yet.

MR. BROOKS: Well, if he comes.

THE COURT: Mr. Bishop may come as the client.

MR. BEEBE: Can we take that up when it happens? It is kind of hypothetical at this point.

THE COURT: We will go forward on that basis.

(Jury present.)

J A M E S F. M c D O N N E L L, resumed.

CROSS EXAMINATION CONTINUED

BY MR. BROOKS:

Q Mr. McDonnell, let's go back to 1962 for a minute. Do you recall attending a meeting in your mother's apartment with perhaps Tom Ford, Murray McDonnell and Bob Aaronson, called there to explain to your mother her proposed subordinated transaction in that year?

A I believe I do, sir, yes.

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Q Did you attend such a meeting?

A Yes.

Q Tell me what was said and by whom.

A I think Mr. Ford tried to explain to my mother that there was really no risk involved in this.

Q No risk?

A Very little risk. I remember saying at that time that regardless of how small the risk, I thought we should have a very definite program of repayment. This is the letter that came out some time later, which was a result of that request I made.

Q By the letter that came out, do you mean--

A The repayment schedule letter.

Q Murray McDonnell's letter that we have looked at this morning talking about repaying a little on a certain schedule?

A Yes.

Q Mr. Ford is an attorney, isn't he?

A He is supposed to be, sir.

Q He is as a matter of fact, isn't he?

MR. BEEBE: Objection, your Honor.

A I wouldn't be able to comment on that.

Q Do you know what firm?

A Sherman & Sterling.

Q Who was Mr. Ford representing?

A It was difficult to determine whether it was McDonnell & Company or whether it was Murray McDonnell.

Q Could it have been Mrs. Anna McDonnell?

A Could it have been?

Q Yes.

A It is possible --

THE COURT: I don't want possibilities here. Strike that out.

Q Do you know whether Mr. Ford has ever represented Anna McDonnell as an attorney?

A Yes, sir, he has represented her as an attorney.

Q Had he in 1962?

A I do not know that, sir.

Q Who is Mr. Aaronson?

A Mr. Aaronson was an accountant who made tax returns.

Q For whom?

A Prepared tax returns for my mother.

Q Did he for the firm of McDonnell & Company?

A That, sir, I have no knowledge of.

Q What did Mr. Aaronson say at this meeting in 1962?

A I don't believe he commented. I think he was there to listen.

Q He said nothing at all?

A No.

Q Did Murray McDonnell say anything?

A I don't recall his having said anything.

Q Did Anna McDonnell say anything?

A Mr. Brooks, you are taxing my memory back to 1962. I really don't recall that she said anything.

Q So as far as you recall Mr. Ford spoke about the risks involved, you spoke about having a repayment schedule, and that's the sum of what you recall?

A That is the sum of my recollection, yes, sir.

Q Who called this meeting?

A I think my brother Murray called it.

Q Did you know the purpose of his calling it?

A Yes, the purpose of it was to explain to mother what is going on.

Q Did you feel that was adequately done at the meeting?

A Did I feel that it was adequately done?

Q Yes.

A I really don't know how to answer the question. You are asking me what I thought at that time or what I am thinking of today. I don't want to poison today with back the I suppose I thought it was all right, what he had to say.

Q You did not add anything other than the request

for a repayment schedule, did you?

A I don't believe that I did, no.

Q Now, let's take a look again at your May, '63, letter to your mother, which is Exhibit H.

A I have an A, yes.

Q H.

A H, all right.

Q So far we have talked about the need for your mother's capital in 1962 to replace some money that was lost due to the activities of one Mr. Sarli who apparently worked a wrong on McDonnell & Company. But take a look at paragraph numbered 1 in your letter. I will read that, Mr. McDonnell. It says, "I must conclude from the subject letter that your funds are required in the firm as medium term capital, not per se temporary, not only to finance day to day operations but to insure the continued controlled expansion of our revenues from our organization as currently established."

Now, the last words, beginning with "the continued controlled expansion," I assume is a quotation by you from McDonnell's letter of April 10th; is that correct?

A Without having that letter in front of me I would not be able to say.

Q You do have it in front of you.

A Would you tell me what exhibit it is?

Q I am not sure.

MR. BEEBE: G, I believe.

A I think you could save me a little time if you could tell me in that letter where the quote is taken.

Q I didn't have any particular part of that letter in mind. I thought you would be refreshed by reading your letter.

A Well, you have asked me to identify a quote.

Q Here we go. Look at page 4 of Exhibit G.

A Page 4; I have only three pages.

Q Look at about the fifth line of page 4.

A I only have three pages.

THE COURT: He only has three pages on G.

Q Page 3, rather, the fifth line, where it begins, "the continued controlled expansion of our revenues from our organization as currently established." Could that have been what you were quoting?

A I believe if that is in quotation marks, that's what I'm --

Q Let's focus on the paragraph of your letter which talks in terms of "medium term capital, not per se temporary, not only to finance day to day operations but to insure controlled expansion."

Does that refresh your recollection on your understanding at the time of the need for your mother's capital?

A Yes, it refreshes my memory.

Q Could you tell me in what respect it is refreshed?

A Well, sir, I think that having received this letter from my brother Murray, I was apprehensive about the fact that her money was not really being put in there to take care of a disaster that occurred as a result of Mr. Sarli, but that it was going to be kept in there for a long period of time to help them branch out.

Q Supply additional capital to run a bigger business?

A Yes.

Q So that there was at least another need for capital besides replacing whatever Mr. Sarli had made off with?

A Well, I didn't know that. I was apprehensive.

Q You were warning your mother about that?

A Yes.

Q Now, let's continue where we left off this morning with your meetings with brother Morgan.

A Now we are going back to number 4 here.

Q January, 1969.

THE COURT: January, 1969.

Can we close up that exhibit, please. It is not

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in use now.

MR. REEBS: That's fine with me.

THE WITNESS: I'm sorry, your Honor.

THE COURT: It is a prevailing interest at this moment.

Q We are going back to January of 1969, I think, when you spoke of a meeting on or about the 30th that you had with Morgan in a restaurant in Detroit, where you had about a two-hour lunch. I believe we covered that meeting. Then you testified this morning that subsequently you had a second meeting with Morgan. I think you said that meeting occurred on February 25th, didn't you?

A I'm not sure that I said February 25th. I think that I said that I did have a second meeting.

Q You are right. You said, on page 251 of your transcript, "I would say it was February of 1969."

I probably jumped to the date of the 25th because in Exhibit 16, which you should have in front of you, which is your claim to the liquidator, you say in paragraph 1 that "On February 25, 1969, Morgan McDonnell, then a senior vice president of the company, met with claimant in Detroit for the purpose of urging him to assume the management of the company's Detroit office."

A Excuse me, Mr. Brooks, I don't have that.

(Pause)

Q Here is the paragraph I was reading from. Do you see that that does fix the date of the 25th?

A Yes, sir.

Q Does that refresh your recollection?

A I have no quarrel with the date, sir.

Q Do you r3call where that meeting took place?

A In Detroit.

Q In a restaurant?

A I don't remember.

Q Do you recall how long the meeting was?

A I believe that meeting did take place in my office in Detroit. It was not a long meeting;brief.

Q Does reading paragraph numbered 1 of Exhibit 16 refresh your recollection that Morgan McDonnell was a senior vice president of McDonnell & Company on or abbut February 25, 1969?

A Well, I knew he was an officer of the company, yes.

Q You would not quarrel with senior vice president, would you?

A I would.

Q You signed Exhibit 16 when it was submitted to the liquidator, didn't you?

A Yes, sir, I did.

Q Did you make a conscientious effort to insure that it was accurate?

A Yes, I made a conscientious effort to see that it was accurate.

Q If you did that on or about the date you submitted it in March or April -- May 22, 1970, are you fairly certain today that you were right on May 22, 1970, that the facts recited in there are correct?

A Yes, sir.

Q Okay.

A When I did this, I did this in 1970. This is 1975, and you are focusing me right on this today.

Q I'm suggesting that you were closer to the events in 1970 and may have had a better recollection at the time you did Exhibit 16.

A That is correct, Mr. Brooks.

Q I'm not trying to hold you to as good a recollection today, merely to refresh that recollection.

A Yes, sir.

Q As this second meeting did Morgan McDonnell tell you anything about the condition of McDonnell & Co.?

A No, sir.

Q Didn't mention any capital problems, did he?

A No, sir.

Q Any back office problems which you might have to deal with as a branch manager if you took over the job he was offering you?

A None whatsoever. He merely told me he had trouble with his manager there and that was it.

Q Well, how was the meeting left? When you parted did you have a deal or didn't you have a deal?

A This was the second meeting. I think I told him at the second meeting that, yes, I would do it. I'm pretty sure I told him that at the second meeting. If I didn't at the second meeting I may have called him

on the phone and told him that, yes, I would go with this thing.

Q Shortly afterwards at the latest?

A Yes.

Q Now, you testified earlier that you did some research and you satisfied yourself that the requirement of purchasing stock in McDonnell and Company to assume the office that Morgan had prevailed upon you to take was really a requirement and it wasn't a ruse to get you to just buy some stock?

A I didn't say that I satisfied myself. I think that I said that I went and pulled out all of the information that was available in the branch office. They are required to have a copy of the rules of the New York Stock Exchange, the constitution, but those documents were required to be kept in every branch office.

So I went out to the place where these were kept, brought them back into my office and I read through them. And it would take a lawyer to understand what they said. But I did, I suppose, satisfy myself that what Mr. Crowe and Mr. McKay had told me about the absolute demand that I put money into this stock was there, was necessary, required.

Q I raise that issue because in Plaintiffs' Exhibit 16 you contend that this was a deception, that you really didn't need to buy that stock to assume the position. I just want to make sure that you are not continuing to press that claim here.

A Press what claim, Mr. Brooks?

Q The claim that it was a ruse that you needed to buy the stock.

A I am pressing that claim.

Q You are pressing it?

A Very definitely; that it was a fraud.

Q What was a fraud?

A The fact that I was told that I must buy the stock and it wasn't necessary.

Q It was not?

A It was not.

Q I thought this morning that you said that you satisfied yourself that that really was a requirement?

A I didn't say that, sir. I said I went and researched, to the best of my knowledge, the rules and regulations and I said that it would take a lawyer to be able to interpret what was in that document. It seemed to say that, yes, this was a necessity. The documents themselves seemed to say that to me.

Q Has any lawyer told you that is notthe case?

A Yes.

Q Who?

A My attorneys.

Q Which?

MR. BEEBE: Objection, your Honor. We are getting into an attorney-client privilege area.

THE COURT: No. He has already testified about the communication. All Mr. Brooks is asking him for is the name.

MR. BEEBE: The name, no problem.

A Mr. Richard Jones of the firm of Miller, Canfield, Paddock & Stone, Detroit.

Q So that is your position today?

A Yes, sir.

Q Now, I understand that money, in other words, your agreed compensation, was not the reason you took this job in the Detroit office?

A That's right, sir.

Q Why was that?

A I have testified that I was in many businesses. Those businesses provided me with what I consider to be adequate compensation. Any monies that I would have received from salary from McDonnell & Company, because

of the United States tax laws, most of it would have gone directly to Uncle Sam. So that the money itself was of secondary consideration.

Q What was the state of activity in your businesses in and about this time in 1969? Were things very active or were they sort of slow?

A Things were very active. However, the money market, if you want to refer to it as such, one's ability to borrow in 1969 was not good. Credit was tight and the businesses that was in or went into constantly required borrowings.

Q This period was commonly referred to as a period of a credit crunch, wasn't it?

A I believe so, sir, yes.

Q Incidentally, what was the compensation for that job in Detroit?

A Mr. Brooks, I don't remember. 17,000?

Q That might have been what you were paid for the time you put it, but wasn't the salary $30,000 a year?

A Mr. Brooks, I don't remember. I asked my brother Morgan "How much do I get paid for this?"

His response was "Whatever the other branch managers get. I don't know."

Q Can you find that financial supplement up there, Mr. McDonnell? I think perhaps that might show what the salary was.

A To what, sir?

Q To your allied membership application. It was the first exhibit I marked today.

A Just a minute now.

(Pause)

A Would that be 13?

Q No, it would be a letter, something like C.

A What?

Q C as in Charlie.

A C, yes, sir, I have it.

Q Do you see a line 9A?

A Yes, sir, it says the corporation will pay me a salary of 30,000 per annum.

Q Do you think that is correct?

A I'd have to go back and see whether I got 30,000. I don't know, sir.

Q You didn't work a full year, did you?

A No, sir, I didn't.

Q You wouldn't get $30,000 for half a year's work?

A No, sir, but I don't know whether my salary was paid at the annual rate of $30,000. I think that's your question.

Q Would you quarrel with the proposition that you signed up for thejob at a yearly salary of $30,000?

A I didn't sign up, sir.

Q You agreed to accept the position for an annual salary of $30,000?

A I agreed to accept the position for any salary.

Q At the request of Morgan to help him out?

A Yes,sir.

Q Now, did you have any discussions with Murray McDonnell about the prospect of your taking over the Detroit office?

A Yes, sir. I wondered whether Morgan had cleared this with Murray, and he indicated he had. I thought that, well, I'd better satisfy myself on that point. So I flew to New York and went into see Murray.

He said to me, "I understand you are coming on board in the Detroit office."

I said, "Yes, that seems to be the case."

He said, "Won't you have a cup of coffee?"

That was the sum and substance of the conversation.

Q How long did it take?

A I might have been in his office 15, 20 minutes, long enough to drink a cup of coffee with him.

Q Did you go back to Detroit?

A To the best of my recollection I went right back to Detroit.

Q Did you talk to Murray about the condition of the company?

A No, sir.

Q Did you talk to Murray about the subordinated loan thatyour mother had made probably within the last month?

A No, sir.

Q By this time did you have any knowledge about your sister Margaret having made a subordinated loan?

A No, sir.

Q Did you know your sister Anna was a subordinated lender to the company?

A No, sir.

Q How about Morgan, did you know he was?

A Yes, sir.

Q And Murray's wife, Marjorie?

A No.

Q Or Peggy as she is called?

A That's correct.

Q You didn't know she was a subordinated lender?

A No, sir.

Q How about Sean's estate, did you know that had sizable capital in the firm?

A Yes, sir.

Q How much?

A I don't know, sir. I knew it was sizable. I had no idea what it was. Nor do I today.

Q Tell me, whose stock did you end up receiving? Can you trace back your shares to a prior owner?

A Yes, sir, I can.

Q To whom?

A To Mr. McKay.

Q Tell me how you can trace it back to Mr. McKay.

A Well, that developed a long time after I purchased the stock, through an investigation made by my attorneys. It developed that Mr. McKay was ill at the time and that he was in need of funds and that he had an

investment in McDonnell & Company. Apparently he went to the board of directors of McDonnell & Company and said that we have Jim in Detroit that is trying to buy some stock. Would it be all right if I sold my stock back to the company and the company in turn sold it to Jim? So that's how I was able to trace the fact that I bailed him out.

Q He was pretty sick at this time, wasn't he?

A I don't know, sir. But he subsequently died.

Q This was about April, wasn't it?

A Yes, sir.

Q Do you know when he died?

A No, sir.

Q How about May?

A I'd guess, May, June, July, something like that. I don't know.

Q Well --

A I had only met him once.

Q If your analysis is correct, Tom McKay really ended up with your $20,000 purchase price, didn't he?

MR. BEEBE: Objection, your Honor.

A No.

THE COURT: Sustained.

A I didn't say --

THE COURT: Sustained.

THE WITNESS: I'm sorry.

Q When did you reach agreement to purchase the stock?

A You will have a wire wherein I authorized my account to be charged for the purchase price of the stock.

Q Well, I also have a document entitled "Agreement by shareholders" that is signed by you, I believe, dated April 8, 1969. It has been premarked as Stock Exchange Exhibit M. Let me show you that and ask you if that bears your signature.

A Yes, sir, that is my signature.

Q Did you sign that on or about the date it bears of April 9, 1969?

A That's what the document says, sir, so I must have.

MR. BEEBE: Did you mean April 8th?

MR. BROOKS: It's April 8th. I have missed again. I apologize.

Q April 8 it is, Mr. McDonnell.

A Yes, sir, I signed that at that time.

MR. BROOKS: I offer it in evidence, your Honor.

MR. BEEBE: No objection.

(Defendant Stock Exchange's Exhibit M was received in evidence)

Q When you signed this agreement entitled "Agreement by stockholders," had you agreed to become a stockholder?

A This may have been preliminary to my becoming a stockholder. I mean one becomes a stockholder when one executes the decision to have their account charged. Whenever that is, I don't know. If I am begging your question I don't mean to be.

Q I don't think you are, Mr. McDonnell. Maybe we have to make it a little more precise.

I know that when you pay for the stock it's when you debit your account. When you agree to buy might be a different date.

A Yes, sir.

Q I am suggesting to you thatthis date of April 8th, when you signed Exhibit M, evidences an agreement by you to buy some stock at a price to be determined later on, and when determined, to be remitted.

Is that the way the situation was?

A I would like to agree with you, Mr. Brooks, but the first sentence there says "Whereas it is contemplated that the undersigned will become a stockholder at some future date."

So, if you are asking me to say that this constitutes a purchase agreement, I'm not sure that I can agree with you.

Q I am just inquiring whether at the time you signed this document agreement by stockholders you had agreed to buy some stock?

A I did agree to buy some stock at one time, you know.

Q How about this time, April 8?

A I was contemplating it.

Q Contemplating it?

A As the statement so says.

Q It could go one way or another?

A The document stands on its own feet.

Q Okay.

Here's another document which you signed entitled "Agreement A."

This is dated as of September 1, 1966. I am not suggesting that that is when you signed it, but why don't you tell me whether that is your signature at the end of it, and then we will discuss when you signed it.

MR. BEEBE: Has this been marked?

MR. BROOKS: Is pre-marked?

A Yes, sir, that is my signature.

MR. BROOKS: This exhibit has been pre-marked Exchange Exhibit L, and I now offer it in

evidence.

MR. BEEBE: No objection.

(Defendant New York STock Exchange Exhibit L was received in evidence)

Q Do you recall when you signed this document marked Exhibit L, which started as of September 1, 1966?

MR. BEEBE: Excuse me. This says "Agreement A," your Honor. I don't know if there are any other attachments to this, or whether this is part of some larger package. If it is, I think it would be appropriate to have them all here at this point.

MR. BROOKS: I can't answer that question, because these documents were produced by Mr. Beebe's firm, marked as Deposition Exhibit 32 at Mr. McDonnell's deposition, and there wasn't anything attached to it when we got it, and I believe he identified it at the time and it was marked simply as it is in the deposition. If anyone can provide any attachments I will be glad to consider them.

THE COURT: Very well. Let's put the next question.

Q Do you recall when you signed Exhibit L, Mr. McDonnell?

A No, sir, I don't, because it's not dated as

such, but I assume it was about the time that I purchased the stock or prior.

Q Could it have been about the time you signed Exhibit M?

A Yes, sir, it could be. I haven't read it, so --

Q Now, Mr. McDonnell, there was, as I understand your deal,an agreement to purchase at book value of the stock at a certain date. Is that your understanding?

A Yes, sir, that was my understanding.

Q Do you recall what date was selected to ascertain the book value?

A The end of March 1969. I think that's it.

Q Would you be kind enough to explain to the jury what book value means?

A Mr. Brooks, that is unfair.

Q That is too difficult for you as a former financial analyst?

A I object to -- excuse me, sir. You are classifying me as a financial analyst. I don't think I told you I was a financial analyst.

Q You did tell the New York --

THE COURT: The only question that is pending

before the house is are you able to define book value so that the jury knows what we are talking about in this testimony.

Q Can you do that, sir?

A In its simplest terms a corporation has assets. That is on the lefthand side. Then on the right-hand side they have liabilities, both short term and long term.

When you subtract those liabilities from the assets, the dollar amounts when you subtract, you come up with the resultant figure. That is book value.

Now, when you take that book value resultant figure, and you divide it by the number of shares of stock that are outstanding you come up with what's known as book value per share.

Do you have any objection to that?

Q No, sir. That is excellent.

Now, McDonnell & Company at first guessed the book value would be a certain amount for your purchase, and as I recall they then decreased that amount once or twice before they finally told you your purchase price?

A Once.

Q They decreased it once?

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A Decreased it, and guessed, you said.

Q That's the way you testified before.

Let me show you a letter dated May 8, 1969 addressed to yourself, which has been pre-marked as Exchange Exhibit N from Mr. McKay. I ask you if you recall receiving that letter on or about May 9, perhaps.

A 9 or 10, yes, sir.

MR. BROOKS: I offer that, your Honor.

MR. BEEBE: No objection.

(New York Exchange Exhibit N was received in evidence)

Q This letter confirms your recollection the book value of the stock you were to purchase was to be determined as of March 27, does it not?

A Just one minute, sir.

(Pause)

A No, sir, it says -- I believe it says "I have no idea whether the value of the stock at the end of April," so it would appear to me that the final determination would have been the end of April, but for some reason or another he had March 27 as a crucial date in his determination of book value.

Q I see. So for you it was to be April, the end of April, would be your interpretation?

A Very quickly, I would have to answer that yes.

Q I believe in the last, or the next to last paragraph, on page 2, Mr. McKay advised you that at the end of February the value was $72.15, and that that was a bit below the $74 that they had estimated you would have to pay. Is that a fair reading?

A Yes, sir.

Q And then you got another letter dated May 19, 1969, from David W. Rome, which has been premarked Exchange Exhibit O, which I show to you.

Do you recall receiving that letter, or maybe it's better called a memorandum, from Mr. Rome on or about the 20th or 21st of May?

A No, sir. This is May 19.

Q That's the date, but I assume it took a few days to get to Detroit, so I was allowing for the mail.

Do you recall receiving this?

A Yes, sir.

Q This letter -- why don't I read it, it's so short.

"To: James F. McDonnell, Jr.

"From: David W. Rome.

"Subject: Overpayment for McDonnell &

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Company, Inc. common stock.

"The valuation of McDonnell & Company, Inc. common stock as of March 27, 1969, has been determined to be $69.06. As a result the foregoing, your account No. 42-92058-1 reflects your overpayment of $882 for 300 shares of voting common stock."

Signed "David W. Rome."

Do you recall that, sir?

A I recall that they had debited my account and that they had made a correction to it, yes.

Q In essence, they were giving you the benefit of a better price?

A Benefit, yes, Mr. Brooks.

Q As a financial analyst, you would realize that the book value of McDonnell & Company stock is declining from February to March to April, would you not?

MR. BEEBE: Objection to the question assuming that he is a financial analyst.

MR. BROOKS: He said he was.

MR. BEEBE: There has been no testimony. As a matter of fact, he said to the contrary.

THE COURT: I will sustain the objection to the form of the question.

Q Mr. McDonnell, based upon the background that you have testified to, do you determine from these last two letters that the book value of McDonnell Company's common stock is declining between February and March, 1969?

A I testified to the fact that it was declining and I testified to the fact that there was nothing unusual about that.

Q How so?

A A corporation in any one month can lose a good deal of money and make it back the next month, so their book value would decline, it would fluctuate monthly up and down.

Q So the fact that a corporation loses a good deal of money in one month doesn't mean that it can't gain it right baack in the next month, right?

A I didn't say that. I said that it merely demonstrates that if there are a-- not a great many shares outstanding that simply mathematics of making the division, you know, would cause this kind of a decline. Had it gone the other way, I would have had to come up with more money.

MR. BROOKS: Mr. Beebe, do you recall whether you marked as an exhibit the wire message yesterday?

MR. BEEBE: I did not.

MR. BROOKS: I will do so now.

Q Mr. McDonnell, I think this is a copy of the wire message you sent to Mr. McKay authorizing your amount to be debited for the amount of the purchase price, and this has been pre-marked as Exchange Exhibit P. Does that appear to you to be familiar?

A This is very familiar, sir. It says, however, that it makes reference to his letter of May 5th.

THE COURT: The question is do you recognize the letter.

THE WITNESS: Yes, sir, I do. I'm sorry.

MR. BROOKS: I offer it, your Honor.

MR. BEEBE: No objection.

(Defendant New York Stock Exchange Exhibit P received in evidence.)

Q Go ahead. I think you were saying something when we interrupted to mark the exhibit.

A Well, I took this wire into the wire room and sent it over the wire.

Q From the Detroit office?

A Yes.

Q To the home office?

A Yes. I did it personally.

Q This wire message authorizes the debiting of your account for book value computed as of May 1, 1969, and

we have seen this Exhibit N,we have seen in Mr. Romm's letter of May 19, 1969, that as of March 27th the book value had slid to 6906. But that was as of March. So April and May had passed. Do you recall what the book value was as of May 1st, when your account was presumably debited, pursuant to your wire instruction?

A No, sir, I don't, but if you multiply 300 times 6906, or some figure like that, we will come out with the exact dollar amount that my account was debited.

Q How long had you had a customer's account at McDonnell & Co. before May 1, 1969?

A Many years.

Q Since 1945?

A Oh, yes.

Q Before 1945?

A Yes.

Q How many customer accounts?

A How many customer accounts did I have with just McDonnell & Company?

Q Yes, sir.

A Just one, sir.

Q Any members of your family have any others?

A I don't know.

Q Did you as a trustee have any trust of other accounts

at McDonnell & Co.?

A At what time, sir?

Q 1969.

A I believe the answer to that is right, yes, that I as a trustee did have other accounts at McDonnell & Company in 1969.

Q How many as trustee?

A I'm not sure, Mr. Brooks.

Q It would be many, though, wouldn't it?

A Many what?

Q Many accounts, as trustee.

A Well, I'm not sure that they were in McDonnell & Company. As a matter of fact, I would like to reconsider my answer there and say that I,as a trustee, probably did not have any accounts at McDonnell & Company in 1969. They were at the Bank of New York.

Q With the Murray trust at the Bank of New York?

A Yes, sir. The Murray trusts were at the Bank of New York, there were two trusts, one the trust under the will of my grandfather, and the other the trust under the instrument. The trust under the will being the larger one was always at the Bank of New York, and is today. The trust under the instrument was moved to McDonnell & Company, but I don't remember when. That's why I wantnd to reconsider

that answer. At one time it was moved over there because the Bank of New York wanted to charge too big a fee for it, and I said "Let's get it out of there."

THE COURT: Counsel, do you want to get this much detail?

MR. BROOKS: No.

THE COURT: The question called basically for a yes or no.

MR. BROOKS: I agree.

THE COURT: In the absence of an objection I wasn't going to cut in, but --

Q Were there any accounts for your children at McDonnell & Company in 1969?

A I believe so, yes.

Q You had how many children?

A Seven.

Q Did they all have an account of their own, in the name of a custodian?

A Trustee.

Q In the name of a trustee?

A Yes.

Q Did any child have more than one?

A Yes, each child has two trusts.

Q Was there a lot of trading going on in the trusts

for your minor children?

A No, sir, I don't trade.

Q So that securities in those accounts were being held there, right?

A Yes, they were.

Q Was there any fee charged for this service of holding those accounts?

A They attempted to charge a fee.

Q How did they do that?

A Well, they told me that they were going to.

Q What did you do?

A I told them that they wouldn't.

Q And they didn't, did they?

A And they didn't. Because otherwise those accounts would have been moved out.

Q You have testified this morning about being called to New York by brother Morgan to counsel during a crisis of the firm where some more money was needed. Do you recall that testimony this morning?

A Yes, sir.

Q Can you recall the meeting you had with a man named Bishop and what he said to you and what you said to him?

A I thought I testified to that this morning, sir.

Q Is that the full extent of it?

A Yes, sir.

Q You said there were two gentlemen with him? Do you recall their names?

A No, sir, I do not.

Q You didn't make any capital contribution you said at this meeting and you went away for the weekend, is that right?

A Yes, sir.

Q Where did you go?

A I went out to Long Island.

Q Any particular place?

A Yes, Southampton.

Q Did you talk to any McDonnell family members out there?

A No, sir.

Q You didn't talk with your sister Anne?

A No.

Q Or Margaret?

A No, sir. I didn't see anybody.

Q Were you by yourself?

A No, I was with my wife.

Q Did I understand you to testify correctly that you told Mr. Bishop that you would make a capital contribution?

A No, I didn't tell him that I would make a capital

contribution.

Q Did you tell him you wouldn't?

A No, I didn't tell him I wouldn't.

Q How did you handle it?

A Well, as I said, I thought -- I regarded this as a kind of a poker game, and I wanted him to go back and say "Well, it is unfair to ask this fellow to come and put money into this firm, he has only been here for 15 minutes. This is what I told him.

Q And that would buy some more time for the firm, wouldn't it?

A Yes.

Q Now, you mentioned that you told Morgan you wouldn't put in any money, and you suggested he go out and sell three seats, and I believe you testified the price they got was three to four hundred thousand dollars. Was that your testimony this morning?

A To the best of my recollection, yes, sir.

Q Was that total, or for one seat three hundred to four hundred thousand dollars?

A Well, Mr. Brooks, I can't really answer the question because at one time seats were selling for around that figure, one seat. Now one seat is selling for around 80. So I don't know.

Q You don't have a recollection?

A No, sir, I don't have a recollection.

Q Whether the three or four hundred thousand dollars was the total?

A I think the total dollars that would be generated within the firm was three to four hundred thousand dollars.

Q For three seats in 1969?

A I think so, sir. I don't really know. The record should show how many seats were sold.

Q I know it, it will show, but I wanted to explore what you seemed to be stating as a fact this morning.

A No, sir, I didn't ever express this as a fact. I expressed this as my recollection.

Q To qualify to be the branch office manager in Detroit, you had to do some studying, didn't you?

A Yes, sir.

Q And pass an examination?

A Yes, sir.

Q And you did pass, didn't you?

A Yes, sir.

Q Let me show you a letter to you by a John P. Foynes dated June 23, 1969, and an attachment there with a check sheet indicating the areas that you studied and the areas in which you needed further work.

I ask you if you received that letter shortly after June 23, 1969 (handing to witness).

MR. BROOKS: That has been pre-marked as Exhibit Q.

A Yes, sir, I received this.

MR. BROOKS: I offer this, your Honor.

MR. BEEBE: No objection.

(Defendant New York Stock Exchange Exhibit Q received in evidence.)

Q Mr. McDonnell, shortly after you suggested Morgan sell those three seats did you have occasion to attend a meeting in late June or early July at the Carlton House Hotel in New York City?

A Yes, sir.

Q Do you recall when that meeting took place?

A No, sir, other than whatever you told me here.

Q Was it on a Saturday?

A I wouldn't remember, sir.

Q Who was present?

A My sister Margaret, Murray, Paul McDonald, my sister Anne, and her husband, my mother, Murray.

I think that's all.

Q How about Tom Ford, was he there?

A I don't remember, sir.

Q How about Richard Olney III, was he there?

A I don't remember that, either.

Q Do you know who called the meeting?

A Murray.

Q What was the purpose of the meeting, if you know?

A I think the purpose was to introduce Paul McDonald to the family, or those that had money in the firm.

Q Anybody else there who wasn't in the family?

A I don't recall.

Q Who was this Paul McDonald that was coming on the scene? Can you explain his arrival to the jury?

A Yes. Larry O'Brien, Lawrence O'Brien, who was the present -- Murray, again, was the chairman of the board and chief executive officer-- Larry O'Brien had departed, and Murray had gone out and found this Paul McDonald and brought him in and made him the president of the corporation.

Q Did you know what qualifications he had at the time?

A Only that he had some investment experience from the standpoint of managing accounts.

Q Did he have any experience in saving failing companies?

A I don't know, sir.

Q Itake it Murray McDonnell did introduce Paul McDonald at this meeting to the family?

A Yes.

Q And did Paul McDonald then make a presentation?

A I believe he did, sir, yes.

Q Would you tell me what he said?

A No, sir, I can't remember what he said.

Q Did he have good news or bad news?

A I remember one word that he used, because I had never -- I didn't use it very much myself. He is going to make a viable company out of this.

Q Did he say that anybody who has money invested in this firm can't count on that money to support their future life style?

A Once again, sir?

Q Anybody who has money in this firm cannot count on that money to support their future life style?

A No, sir.

Q Did he say anything like that?

A No, sir.

Q Can you recall anything else he said?

A No, sir.

Q Did he discuss any plans he had for the direction in which the company would be going after the meeting?

MR. BEEBE: Objection. He has just testified he can't recall anything else.

THE COURT: His recollection is being refreshed.

A No, sir, I don't recall his doing it at that meeting. He did -- I had many meetings with him, you know, after that.

Q Later?

A Yes.

Q Did you have any discussions with any of the family members after this meeting at the Carlton House?

A No, sir. I believe that I left the Carlton House and went to the airport.

Q You didn't talk to your mother about the meeting?

A I don't believe so, sir.

Q Mr. McDonnell, let me show you a memorandum headed "For internal use only," dated August 1, 1969, which has been pre-marked as Exchange Exhibit T. I ask you if you recall seeing this memorandum at or about the time it was issued?

A (Examining) Yes, sir, I think I have seen this before.

Q Does that include the attached press release?

A Yes, sir.

Q Can you tell me the circumstances under which you saw this?

A Yes. If I am not mistaken, this memorandum was

draft by a Mr. Ira Capenstein, who was a press relations assistant to Larry O'Brien, Lawrence O'Brien.

Q And were you on the premises of McDonnell & Company's New York office at or about the time this was issued?

A. I couldn't swear to the fact I was there the day it was issued but I was in New York.

Q In the general vicinity or in and out of the office, weren't you?

A I was either in Detroit or in New York.

Q You heard your sister Margaret testify that during August you spent a lot of time in New York & the office; is that your recollection?

A Did she testify to that?

Q Yes.

A Yes, I spent a lot of time.

MR. BROOKS: I would like to offer this memorandum of August 1st, your Honor.

MR. BEEPE: No objection.

(Defendant New York Stock Exchange Exhibit T received in evidence.)

Q Did you concur with the issuance of this memorandum and the press release, sir?

A Now you have asked two questions. Question number 1

is did I concur with the memorandum and the press release. Now, I did concur in general with the memorandum.

Q And its issuance?

A The general plan, salvage plan shall we call it.

The press release I had absolutely nothing to do with at all.

Q Well, you did see it at this time, didn't you?

A No, sir.

Q It wasn't attached to the memo at the time?

A No, sir.

Q Did you see it at the time it was issued?

A I read it in the newspapers.

Q Not before?

A No, sir.

Q What did you think about it when you read it in the newspapers?

A Nonsense.

Q What do you mean by that?

A I knew it wasn't true.

Q What wasn't true?

A It says here, "The company has made arrangements for new capital in the minimum amount of $3,000,000 and up to a maximum of $10,000,000." That was not the fact.

Q Did you take any action?

A Like what?

Q Like go to the company and tell them they have put out a false press release?

A No, sir.

Q You were a vice president of this company, weren't you?

A I was an office manager.

Q You were a vice president, were you not?

THE COURT: Yes, he was a vice president, Mr. Brooks, in title, that's correct.

Q Tell me, you don't think that at this time they had made arrangements for this amount of money?

A I know they had not.

Q Were you aware of negotiations that were going on with a syndicate of investors headed by Dan Lufkin at about this time?

A Yes, sir.

Q Did you know whether those negotiations had reached an agreement at this time?

MR. BEEBE: Your Honor, I object to the relevance of this line going into August and thereafter, 1969. I object to the questions as being irrelevant.

MR. BROOKS: If Mr. Beebe agrees not to refer to this press release any further in this trial, I will drop

the matter right here.

THE COURT: I don't know whether he wants to give an immediate answer on that proposed stipulation or not. But I think the areas has possible relevance to the issued and I will permit it.

The objection is overruled.

Q Do yourecall the question?

A No, sir, I don't.

Q Did you know whether the negotiations with this Lufkin group of investors had reached the agreement point at the time this press release was issued?

A I knew that they were negotiating with the Lufkin group. Lufkin and Marks I think was the other name.

Q They had possibly large amounts of money to contribute to the firm, did they not?

A I didn't know really. I assumed that everybody had heard of Lufkin and he must have had a lot of money.

Q Well, do you know what the status of those negotiations were on August 1st when this press release was made?

A What you want me to say is did I know that they had broken down when this was released, and I can't testify to that.

Q I want you --

A I know the money was not in the house when that thing came out.

Q Do you know what the status of the negotiations were, sir?

A No, sir, I don't.

Q Now, during August, I believe your sister Margaret has testified that you kept her generally informed about what was going on at McDonnell Company; is that your recollection in August, '69?

A Yes, sir.

Q And were you doing that in good part from the premises of McDonnell & Company's head office in New York City?

A Yes, sir.

Q Were you similarly keeping your mother advised?

A I was doing my best not to worry her.

Q Well, can you answer my question?

A I can say that I tried to reassure her.

Q You didn't tell her the real facts then?

A It depends on when you mean.

Q August.

A Late August I gradually started breaking the terrible news to her, yes.

Q And tell me what the situation was in August.

A I had made an independent judgment that McDonnell & Company was losing money at the rate of two million dollars a month. I had also made the judgment that McDonnell & Company had undertaken to close off many of their branches, which was the source of their income. I also made the judgment that because of the horrendous problems in the back office there was no way to reduce the back office staff. There was no way to cut down the expense to match the income coming in. I had made the judgment then that McDonnell & Company was lost.

Q And your recommendation was to shut it down, wasn't it?

A Yes, sir, that was my recommendation.

Q You gave that to Paul McDonald, didn't you?

A Yes, sir.

Q What did he say?

A He called a meetibg.

Q And what happened at the meeting?

A He called a meeting at which time there were brought in some lawyers who had handled another unfortunate case some years back, a case that involved a firm --

THE COURT: Let's not get involved in that.

MR. BROOKS: I think it is very germane. I would like the witness to testify to this. These are not his words.

THE COURT: You mean it is some other situation entirely?

MR. BROOKS: Yes. It has relevance. I think it will connect up.

THE COURT: It will have relevance if the fact of this is the reason for his communicating to somebody, not merely the fact that these lawyers happen to have a certain other client years earlier.

MR. BROOKS: Well, the witness, I think, can explain that these lawyers advised McDonnell of their experience and they followed that advice.

THE COURT: I see. All right.

Q Please continue, Mr. McDonnell.

A Well, their advice was that the firm should not be shut down; that if it were shut down at that time it was their thought that the investors wouldn't do too well, wouldn't make out too well.

Q The investors meaning stockholders, debenture holders and subordinated lenders; right?

A Yes, sir.

Q Who were these counsel?

A I don't know.

Q Do you know what firm they had prior experience with?

A Yes, sir.

Q Which firm was that?

A I thought I said it. Ira Haupt.

Q Do you know the circumstances of that firm?

A No, sir, I don't recall them.

Q So the bottom line of their analysis was that if you shut this firm down now in August the subordinated lenders, debenture holders and stockholders would not come out of it very well; is that right?

A I would have to agree that that was the bottom line of it, but I wouldn't agree that I agreed with that conclusion.

Q Of course not. I don't ask you to. But Paul McDonald did, didn't he?

A Paul McDonald was a very close friend of Murray McDonnell, he was hired by him.

Q Well, my question was did he agree with these lawyers who were relating their past experience and their recommendation?

A I don't know whether he did or didn't.

Q Did he continue to operate and try to improve the firm?

A He continued to operate because he was being compensated extremely well.

Q Did he make efforts to try to make the situation better?

A I would have to say he did, yes.

Q And how about the other investors in McDonnell & Company, did they want to shut this firm down at this time? You weren't an investor, but how about the investors?

MR. BEEBE: Objection. Did you say he was not an investor?

MR. BROOKS: I apologize. You are right, Mr. Beebe.

Q You had a $20,000 stake.

MR. BEEBE: And as a trustee --

THE COURT: Let's not get into all of these things. Let's wipe the slate clean and put another question, please.

Q Did the other investors beside yourself agree with you that McDonnell & Company should be shut down in and about August of 1969?

A I don't know, sir. I think they must not have agreed with me because the firm continued. So they must have overruled what my thoughts were.

Q Were they consulted?

A I think they must have been.

Q Do you recall testifying at your deposition on page 303 in response to this question:

"Q Did the other major lenders think that the firm could be salvaged?

"A Obviously.

"Q Pursuant to the plan that had been put into effect which involved, among other things, the sale of branch offices?

"A Yes.

"Q Who devised that plan?

"A Paul McDonald. He was the president of the corporation."

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Do you recall testifying to those questions and giving those answers?

A Yes.

Q That is correct, is it not?

A Yes.

THE COURT: Are you going on to something else?

MR. BROOKS: One or two more questions and then I will be at a breaking point, your Honor.

Q Now, about this time you pitched in and tried to help raise some money for the firm, didn't you, sir?

A No, sir.

Q You did not?

A No, sir. But I -- excuse me.

Q Were you going to continue?

A Do you want me to?

THE COURT: Put a question to him.

Q Let me try to refresh your recollection by reading to you from what Paul McDonald said at his deposition at page 60 --

MR. BEEBE: Objection, your Honor.

THE COURT: Sustained.

MR. BROOKS: May I not refresh this witness'

recollection --

THE COURT: Not by reading it aloud. Put it under his nose and ask him to look at it and that is another thing.

Q I show you, Mr. McDonnell, the deposition pages --

THE COURT: Just show him something. Let him look at it. Don't identify it. If it refreshes his recollection, fine. If it doesn't, it doesn't.

Q Read the pencilled off sections, sir, and see if your recollection is then refreshed.

(Witness reads)

THE COURT: Mr. Brooks, this is on the question of whether or not he endeavored to raise money?

MR. BROOKS: Yes.

A I do read what --

THE COURT: No, Mr. McDonnell, having looked at that does that refresh your recollection as to whether or not you endeavored to raise money?

THE WITNESS: Yes, sir.

THE COURT: What is your recollection as refreshed?

THE WITNESS: My recollection is that I did

not attempt to raise money for the firm of McDonnell & Company at that time. However, I went to some of my friends in business and I said to them, "Will you please put business through McDonnell & Company from your organizations to that McDonnell & Company's income would go up to match their expenses."

If you want to know who I went to I'd be very happy to tell you.

Q Please do.

A I went to the vice president in charge of finance for the Chrysler Corporation, Mr. Tom Killifer; I went to Mr. Roy Chapin, the prsdident of American Motors; I went to Mr. Sanford Kaplan, executive vice president of Xerox Corporation.

Those were the three places that I went. I didn't go; I called.

Q Do you know a Max Fisher?

A Yes, sir, I do know Max Fisher.

Q Did you have any association with him in connection with these endeavors?

A Association? I ran into Max Fisher on the airplane coming from Detroit to New York one time. Mr. Fisher is an extremely wealthy industrialist in Detroit, and I sat beside him and I said to him, "Would

you be interested in buying out McDonnell & Company?"

Mr. Fisher and I are in another investment in Detroit, and this is the reason for that conversation.

Q You asked him to buy McDonnell & Company?

A I said, "Would you be interested in buying a brokerage firm?"

Q What did he say?

A He said "Give me a ring tomorrow."

Q Did you?

A I did.

Q What did he say to you?

A "Not interested."

Q How about Joseph Meehan; do you know him?

A Yes, sir, I do.

Q Who is he?

A Joseph Meehan is dead. He was the senior partner in a brokerage firm here in New York called M. J. Meehan & Company. Mr. Meehan has been a lifelong -- was a lifelong friend of mine.

Q Did you ask him to assist McDonnell & Company in any way?

A Yes, sir.

Q What did you ask him?

A I said to him, "Joe, you have been a former

governor of the exchange, you have a lot of friends on Wall Street. Why don't you see if you can get a group of your friends together down there to help us out."

Joe came back a few days later -- he didn't come back. I had to call him. And he said "I'm sorry, there is nothing I can do."

Q I take it you were advised about this recapitalization plan that we have discussed in Mrs. Murphy's testimony at aboutthe time it was devised, were you not?

A Yes.

THE COURT: Now you are getting into something new. We will take our recess at this point, ladies and gentlemen.

(Recess)

(In open court; jury present)

CROSS-EXAMINATION CONTINUED

BY MR. BROOKS:

Q Mr. McDonnell, were you in favor of the recapitalization plan which was devised in the late summer and early fall of 1969?

A No, sir.

Q Did you so advise your mother, that you were not in favor?

A Yes, sir.

Q Did you so advise your sister Margaret Mary?

A I believe so.

Q What were the reasons for your disapproval of the plan?

A I felt that McDonnell & Company should have been shut down, because I knew that the company was losing $2 milliona month, and that there was no way to get rid of the expense in the back office, that I thought if there was any change of their salvaging anything at all that firm should ha ve been shut down.

Q Did you tell your mother that?

A Yes.

Q Did you tell your sister Margaret Mary?

A I believe so.

Q And they nevertheless consented to the plan, did they not?

A The record would have to speak to that, sir.

Q Well, you did recommend that that plan was the only alternative to shutting down, did you not?

A No, sir, I wouldn't say that.

Q Let me try to refresh your recollection. Do you recall this question and this answerat your deposition on page 268:

"Q That being the assumption, did you speak for or against the recapitalization plan, or did you have no recommendation to make? I want to know what you said about it, if you said anything.

"A Well, I think my recommendation was that it seemed about the only alternative available."

Do you recall giving that answer to that question?

A Yes, sir.

Q I now would like to turn to the claim that you are making as trustee of the estate of James F. McDonnell, Sr., in respect to the debenture which you testified about this morning and the preferred stock which you testified about.

I think it would be helpful if you would have in front of you trial exhibit 11A, which is the claim of the trustees.

(Document handed to the witness)

Q Do you recall the will of your father, Mr. McDonnell?

A In general, sir, yes.

Q That is an exhibit to trial exhibit 11A. It's Exhibit 11.

Do you recall that the will authorized, among other things, that the executrix and subsequently the trustees could loan assets of the estate or the trust to the sons of James F. McDonnell so they could invest it as capital in the firm of McDonnell & Company?

A Within a narrow limit, yes.

Q What is that limit?

A I would have to read the will.

Q I just didn't recall a limit, and you seemed to, and I wanted you to tell me in general what it was.

A It was limited to the amount of money that was in McDonnell & Company at the time of his death, I believe.

Q Do you recall how much money that was?

A No, sir, I don't.

Q Do you also recall about the will, and subsequently the provisions governing the trust, that the capital of James F. McDonnell, which reflected his partnership interest, was authorized to be retained in the firm of McDonnell & Company?

A I think that's what I said, did I not?

Q No. My first question was: Do you recall the will authorizing the executrix and thetrustees to loan assets of the estate to the sons of James F. McDonnell so that they could invest it as capital in the business?

A I think the will stated that the amount of money that he had in McDonnell & Company at the date of his death could stay there.

Q Did it also authorize loans to his sons from estate assets to be invested in the firm?

A I don't know, sir. You would have to read the will. I mean I really can't remember. I haven't looked at that will in years.

Q I thought the will was attached to the claim.

Yes, it is.

Why don't we just take a look at it, since we have it. It's Exhibit 1 to the claim. Take a look at page 7, paragraph in the middle of the page. Tell me if

that refreshes your recollection on the power that I described on the part of the executrix and the trustees to lend estate assets to sons of James F. McDonnell for investment as capital in the firm of McDonnell & Company?

A In their sole discretion.

Q Yes, sir. And without security, you will see down a little below there.

A In their sole discretion.

Q And it generally says that, in their sole discretion?

A Specifically it says that.

Q Then it also says that the capital which was Mr. McDonnell, Sr.'s in the firm could remain in the firm, does it not?

A I don't know, Mr. Brooks. If you can give me the line I could read it.

Q Page 8, the first full paragraph, sir.

A It says "In their sole discretion we can allow all or any part of the capital which I may have invested in the partnership of McDonnell to remain."

Q That capital your father had invested in the firm of McDonnell came to be reflected by the debenture and the preferred stock that we have been talking about this morning, didn't it?

A Yes, sir.

Q Who were the beneficiaries of the trust estate of which the debenture and the preferred stock were assets?

A All of his children.

Q That would be the 14 children of Anna and James McDonnell, correct?

A No, sir. 13.

Q 13 children of Anna and James McDonnell?

A Yes.

Q When you assumed your duties as trustee, those duties that you spoke about this morning, did you have an awareness of the inventory of the assets of the trust?

A I did, sir. In complete detail. Which came to me from a court in New York City here.

Q Among those assets were the debenture series B maturing December 31, 1968, right?

A I believe that to be the case.

Q And the preferred stock?

A I believe that to be the case.

Q Anything else?

A Anything else?

Q Yes, sir.

A Oh, yes, sir.

Q Tell me what else.

MR. BEEBE: Objection, your Honor.

THE COURT: Is this relevant?

MR. BROOKS: I don't know.

MR. BEEBE: Then I certainly object.

THE COURT: For what purpose are you exploring? Do you expect to find something that bears on the case?

MR. BROOKS: I think it may.

THE COURT: Suppose he says he has automobiles, and things of that kind?

MR. BROOKS: It may go to the ability of Mr. McDonnell to recall what assets and what details attach to those assets that he has custody of as a trustee. If he's got 50 assets maybe it's harder to keep track than if he's got four.

THE COURT: You can find out if he has trouble keeping track of them. Go ahead and see where we go.

Q Did you have trouble keeping track of the debenture and the preferred stock?

A Of the debenture and the preferred stock?

Q Yes.

A I certainly did with the debenture. Now you see it and now you don't.

Q Did you see it when you started out, you knew you had it?

A Yes.

Q You knew that it was a B debenture at a certain interest rate that matured on December 31, 1968, is that right?

A Yes, sir.

Q I show you a receipt signed by your mother and dated December 5, 1968, that's been pre-marked as Exchange Exhibit U.

I suggest to you that that is your mother's signature, and advise you that your counsel has advised me that they have so ascertained.

I ask you, would you disagree with that?

That is your mother's signature, is it not?

A Yes, sir, it is.

Q And is that her handwriting below it where it says December 5, 1968?

A I don't know, sir.

Q But it does say that, doesn't it?

A It says December 5, 1968.

MR. BROOKS: Let me read this, it's very

short.

First, I will offer it in evidence.

MR. BEEBE: No objection.

(Defendant New York Stock Exchange Exhibit U was received in evidence)

Q Did you know that on or about December 5, 1968, -- well, let me stop. I promised to read it.

(Mr. Brooks read to the jury from Defendant New York Stock Exchange Exhibit U in evidence)

Q Were you aware your mother received the series B certificate on or about the date December 5, 1968?

A No, sir.

Q She did not tell you that, did she?

A Mr. Brooks, my father's estate stayed in probate ten years after he died. He died in 1958. The estate came out of probate, and I became an active trustee sometime in 1968.

Now, whether she received this priot to my having any responsibilities in connection with my father's estate or not I don't know.

Q You did take on those responsibilities sometime in 1968, did you not?

A I believe so, sir, yes.

Q And it was at that time that you had a full and complete inventory, was it not?

A Whenever the court delivered it to me, sir, yes.

Q Shortly thereafter, when that debenture became due on December 31, 1968, did you as a trustee make a demand for payment of it?

A No, sir, I did not.

Q Why not?

A Because I must confess that I was remiss as a trustee and didn't really find out that it wasn't paid off until July.

Q Sort of lost track of it?

A Yes, sir.

Q Did you ever ask your mother whether she made a demand for payment on or about December 31, 1968?

A She wouldn't know, sir.

Q She wouldn't know whether she made a demand or not?

A She wouldn't know enough to make a demand.

Q Did you ever ask her?

A I beg your pardon?

Q Did you ever ask her whether she did?

A No, sir.

Q Mr. McDonnell, take a look at -- well, it's Exhibit 9 to Exhibit 11A, but Mr. Beebe also marked it as a separate exhibit this morning. It's the September 12, 1969 letter from you and your mother to the firm of McDonnell & Company. Maybe if you can find the separate exhibit -- maybe Mr. Beebe can give it to us -- it will be easier to deal with.

MR. BEEBE: I believe it's Exhibit 19, and it's in front of the witness.

(Pause)

Q Was that the first demand that had ever been made on the firm of McDonnell & Company for this debenture?

A Yes, sir.

Q This letter of September 12 doesn't ask for payment of the debenture. It appears to me that it says "The trustees demand return of the certificate evidencing the B debenture. If the certificate has been misplaced or destroyed, please issue a replacement certificate."

Now, can you tell me why you were not demanding money and only demanding the certificate?

A Do you mind if I read the paragraph preceding?

Q Read the whole letter, sir.

A I don't think we have to go through the whole

letter but it says "Please be advised that the trustees have never authorized the exchange of the E debenture for the B debenture, the acceptance of the E debenture, or the surrender of the B debenture of the corporation, and as a consequence the B debenture must be regarded as presently outstanding."

And the B debenture's expiration date was December 31, 1968. Therefore, this being much later on would indicate to anyone that the amount was overdue and payable.

Q Then why doesn't this letter ask for $318,000 instead of the B certificate?

A Because it was drafted by Miller, Canfield, Paddock & Stone in Detroit, my attorneys, and I asked them to withdraw a satisfactory letter.

Q They know how to ask for $318,000, don't they?

A How do you know?

MR. BEEBE: Objection, your Honor.

THE COURT: No, I think in this circumstance I will overrule the objection.

Q Did you give Miller, Canfield, Paddock & Stone any instructions as to what kind of letter they ought to send?

A Specific instructions?

Q Specific as to whether you demand dollars, cash, or whether you demand a piece of paper that you already had, if you look at the exhibit that we just marked a minute ago, Exhibit U.

A I told them I wanted the money and I wanted a satisfactory letter that I could present to the management of McDonnell & Company.

Q When they drafted this letter, before you signed it did you read it?

A Yes, I read it.

Q Did you notice that it didn't ask for cash, nd that it asked just for a piece of paper?

A That is your interpretation. My interpretation is that it does ask for cash.

Q I don't see any dollar signs on this letter. Do you see any?

A I said that the debt was due and payable.

Q Do you see those words in here, the debt is due and payable?

A If the B debenture must be regarded as presently outstanding and if the B debenture says it is due and payable on or about December 31, 1968, then it's due and payable.

Q Sometimes you have to ask for your money, if you want it.

A If I were the author of this I might have written it differently, Mr. Brooks, but I was not the author of this, this was done by my counsel.

Q You signed it, did you not?

A Yes, sir.

Q As a prudent trustee?

A Yes, sir.

Q You recommended your mother sign it, did you not?

A Yes, sir.

Q Did you ever think what would have happened to McDonnell & Company if you yanked out $318,000 in cash on September 12?

A Yes, sir.

Q What would have happened?

A If they had told the New York Stock Exchange of the existence of this letter McDonnell & Company would have gone under.

Q Is that why you didn't send a copy to the stock exchange?

A No,sir. I had no obligation to so do. I was informing the management, the board of directors,

everybody, at McDonnell & Company that was in charge, and it was management's responsibility to so do.

Q Mr. McDonnell, this letter is dated September 12, 1969. I now show you a memorandum on the letterhead of J. F. McDonnell, Jr., McDonnell & Company Detroit office. I ask you if you recall that memorandum to which is attached a copy of the September 12 letter (handing to witness).

Do you recall that memorandum?

A Yes, sir.

Q Was it prepared in your office in Detroit?

A Yes, sir.

Q Was it prepared by you or under your direction?

A Yes, sir.

MR. BROOKS: I offer this and the attached exhibit.

THE WITNESS: I object to the attached exhibit.

MR. BROOKS: I offer this and the attached exhibit, your Honor.

THE WITNESS: There is no reason to believe that the attached exhibit was attached to this piece of paper here.

Q It was attached when?

MR. BEEBE: Could we have a voir dire?

THE COURT: We should have something.

MR. BROOKS: I can show the letter where the letter came from, and it was marked at a deposition, and its attachment was attached at the time it was marked at the deposition.

MR. BEEBE: Is there a deposition number on this?

MR. BROOKS: Yes. 222.

I think if you will look at the numbers on the top of the two pages they are consecutive, showing that wherever these exhibits came from they were found next to each other.

THE COURT: What is the objection to page 2?

THE WITNESS: Your Honor, I am not certain that page 2 was attached to page 1.

THE COURT: Do you have any objection to offering them as two separate pieces of paper?

MR. BROOKS: Okay.

MR. BEEBE: The second page I think has already been marked in evidence.

THE COURT: I know it has.

MR. BROOKS: Yes.

We will mark the first page then.

(Defendant New York Stock Exchange Exhibit V was received in evidence)

(Defendant New York Stock Exchange Exhibit V1 was received in evidence)

MR. BROOKS: Your Honor, I would like to read Exhibit V, if I may.

(Mr. Brooks read to the jury from Defendant New York Stock Exchange Exhibit V in evidence)

Q Mr. McDonnell, what do you make out of this memorandum?

A I have nothing to make out of it, sir.

Q Well, is this memorandum, referring to Exhibit V1, the September 12 letter?

A Hypothetically, it's possible.

Q It's possible? Aren't the addressees and the cc's on the September 12 letter exactly the same as those indicated on the memorandum which is Exhibit V?

A No, sir.

Q Would you point the difference out to me?

THE COURT: The exhibits speak for themselves. If you make something of the differences why don't you explore it as counsel rather than just have him

read?

Q Mr. McDonnell, the September 12 letter, Exhibit V1, is addressed to Mr. T. Murray McDonnell, chairman of the board, is that correct?

A Yes.

Q Mr. T. Murray McDonnell is the first name on the memo, Exhibit V, is it not?

A Yes.

Q And then there are cc's on September 12 letter to all board members, is that right?

A Yes, that's correct.

Q Are the board members those names who are indicated on Exhibit V as directors?

A Yes, sir, I believe so.

Q Then the c.c. on the September 12th letter below board members is Sherman & Sterling attention of Tom Ford, Esq.?

A Right.

Q And that substantially is the next addressee on the memorandum?

A That's right.

Q And next we have Lybrand, Ross Bros. and Montgomery on the September 12th letter?

A Yes, sir.

Q Then don't we have that on the memorandum which is Exhibit V?

A Yes, sir.

Q And last of all, on the September 12th letter, we have Paul McDonald, and on the memorandum do we not have Paul McDonald?

A Yes, sir.

Q The memorandum is dated October 27, 1969?

A Yes, sir.

Q And it is captioned "Mailed to" all of those names we have just gone thrcugh. Doesn't this suggest to you that

the September 12, 1969, letter was not mailed until October 27, 1969?

A No, sir.

Q It does not. Then can you give me another explanation for this memorandum?

A Because there might have probably been another letter in between here to which this was attached, namely, this letter from my office.

Q You think Exhibit B refers to something else other than Exhibit V-1?

A I would suspect that's possible that it could.

Q Possible?

A Therefore it would be difficult for me to say that it absolutely didn't.

Q Can you say whether Exhibit V does not refer to Exhibit V-1?

A I would say it probably does not simply because of the differences in the dates.

Q Mr. McDonnell, isn't it a fact that you had a good deal of discussion with Paul McDonald in the late summer and fall of 1969 when you were going to, as you put it, blow the whistle on this debenture problem?

A Yes, sir.

Q Isn't it a fact that you wrote this September 12th

letter and held it until October 27th before you sent it?

A No, sir, I do not believe so.

Q You don't believe so. Are you certain?

A I can't be absolutely certain, but I am reasonably certain that I did not.

Q But you are not certain?

A No, sir, because I had many conversations with Paul McDonald about this debenture.

Q And you do --

A -- and collect for it.

Q You do recall a certain reluctance on your part to blow the whistle, don't you?

A Reluctance motivated primarily by the fact that I was trying to get them to issue a new note, one that would be perfectly secure, whose terms would be very satisfactory to me, in exchange for this. I was reluctant to blow the whistle, yes. But I wanted a new note issued, one that was better than the one that they tried to sell us, the E debenture.

Q You said that the E debenture didn't have as good terms as the B debenture?

A That's right.

Q Now, the E debenture, and the B debenture, are attached as exhivits to trial Exhibit 11A. I would like you

to compare those, and you tell me which of the terms are better in the B debenture than the E debenture.

A That is going to be a difficult thing to do here.

Q Well, you said that --

A Let me see if I have it. I have the B. I don't think I have the E. Just a second.

Q Let me see if I can help you with that.

The E debenture is the second page in Exhibit 3 to trial Exhibit 11A. It follows the letter to your mother of August 4th.

My question is: This morning you said--

MR. BEEBE: Could you wait until he has it?

(Pause)

Q Perhaps we could first compare the interest rates.

A Mr. Brooks, you asked me originally to tell you why one was more favorable than the other.

Q Yes, that's correct.

A So if you would direct my attention to where the status of the note is in relation to its claim upon McDonnell &Company perhaps I could tell you what I found there. I found that the E debenture was of lower stature.

Q You mean of priority in liquidation?

A Priority. Well, yes, I suppose.

Q And that is your understanding?

A That is my recollection that the thing that was most obnoxious to me was how it stood in the order of obligations of the company.

Q How about interest rate? Which is better?

A Which is what?

Q 6 per cent on the B and 2 per cent above prime, I believe, on the E. 2 per cent above domestic prime.

A De minimus. Not of vital essence to the note.

Q Do you know what the prime rate was in 1969?

A No, sir. I don't know what it is right now.

Q Why don't we drop this phase of the discussion.

You did, I believe a while ago, say that you tried to negotiate for a better note?

A Yes, sir.

Q When did this negotiation take place?

A In the summer.

Q I have here some letters that were exchanged between Tom Ford and Richard Jones of the firm of Miller, Canfield, Paddock & Stone, in October and November of 1969. These are attachments to trial Exhibit 11A. Are those the negotiations that you are referring to? They are the latter exhibits in that trial exhibit.

A Would you repeat the question?

(Question read.)

A Yes, sir.

Q And they are dated in the fall, October and November, are they not?

A Yes, sir.

Q Were there other negotiations that went on in the summer?

A Yes, sir.

Q Any letters in the summer?

A I don't know, sir, if you don't have them.

Q Do any of those letters ask for return of cash rather than a new certificate or to try to work out a new form of a note or instrument?

A There seems to be one missing.

Q Aren't those exhibits to Exhibit 11A consecutive?

A No, sir. It is not complete. There is one missing. There are several missing. Tom Ford writes to Richard Jones "This will acknowledge receipt of your letter of November 4th and November 18th. I am forwarding them both on to Paul McDonald and will be in touch with you in the near future."

The November 18th letter is here, but the November 4th letter is not here.

Q Take a look at Exhibit 12 to Exhibit 11A, and see if that is the November 4th letter.

A I have 11A here. What do I have to look for?

Q Exhibit 12 attached to that.

A Okay.

Q My real question is: I had not been able to find any requests for cash in these negotiations, they all appear to be trying to work out an instrument, a written instrument, whereby the money could remain in McDonnell and the trustees could have a different piece of paper. Is that your understanding?

A I went to my lawyer in Detroit, Dick Jones, and I said "We want to get this money back. What can we do about it?"

In response to that, Dick Jones wrote this letter. Do you want me to read it?

Q Only if it is responsive to my question about asking for cash.

A I think it is.

THE COURT: It is in evidence now, and we are getting late in the day, and I would like to shorten this as much as possible.

Q Why don't you just read the portion that you think refers to cash.

(Pause)

A Yes, sir. It states here "Unfortunately, earlier during 1968 Jim had expected that the Series B debenture would

be paid when it matured."

Q That is a request for cash on November 4th?

A My lawyer is directing it to the lawyer for McDonnell & Company.. He is not directing it to McDonnell & Company as such.

Q But isn't he talking about working out another written instrument?

MR. BEEBE: I object to a lot of questions that seem to be going towards legal conclusions out of this witness, who I don't believe is a lawyer. I am not sure that a demand is necessary when a debenture comes due and payable. In fact, I don't think it is.

THE COURT: This is a slightly different aspect of this, but I think the exhibit speaks for itself and the foundation has been laid for any argument that Mr. Brocks wants to make.

MR. BROCKS: I think we can leave the topic.

Q Mr. McDonnell, you have testified that you discovered the unauthorized conversion in June, I believe, 1969, when you were working in the back office of McDonnell. Is that your testimony?

A June or July, sir.

Q And that you immediately called it to somebody's attention?

A Yes.

Q Trial Exhibit 11A says something to the contrary, and I would like to find out what the case is. Look at paragraph 12 on page 4, which reads as follows: --

MR. BEEBE: Page 4 of what?

MR. BROOKS: Trial Exhibit 11A.

Q It reads "Anna M. McDonnell does not recall ever at any time prior to her receipt of the letter dated August 4, 1969 (Exhibit 7) having been advised either orally or in any other manner by anyone of the purported exchange of the Series E for the Series B debenture. James F. McDonnell, Jr. is certain that at no time prior to his discovery of the letter dated August 4, 1969, (Exhibit 7) was he ever advised either orally or in any other manner by anyone of the purported exchange of the debentures."

That seems to be about a month and a half later than you testified. Do you have any better recollection after having read paragraph 4 of Trial Exhibit 11A when you first discovered the debenture exchange?

A No, sir. If it wasn't July I suppose it was the first part of August, which this indicates.

Q It could have been the first part of August?

A Yes, sir.

Q You are not sure?

A It could have been August, yes.

Q Would you look at Trial Exhibit 16.

MR. BEEBE: What's that.

MR. BROOKS: Mr. McDonnell's claim to liquidator.

Q Would you look at Exhibit G on that.

A I'm sorry, sir, all I have is the claim here. I don't have the attachment to it.

MR. BROOKS: Do you have the attachments, Mr. Beebe?

MR. BEEBE: I believe they are somewhere in front of the witness with the other exhibits. They were attached to the whole thing that was handed to you and put in front of him.

THE COURT: Do you have a copy you can lend him, Mr. Brooks, for the purpose of your examination?

MR. BROOKS: Yes, sir. I think he should have that.

THE WITNESS: Is this what you are talking about?

MR. BROOKS: Here it is.

THE WITNESS: All right, I have it. Is this the only one I need?

MR.BROOKS: Yes. The front part of Trial Exhibit 16.

Q Now, do you recall when you got Exhibit G, which is the financial statement?

A No, sir.

Q Let me show you an original copy of that financial statement, and ask you if you recognize it as such (handing to witness).

MR. BROOKS: That's been pre-marked as Exchange Exhibit J.

A Yes, sir.

Q You do recognize it?

A Yes, sir.

Q Do you recall receiving that in your account statement at McDonnell & Company when you got your customer's statement one month?

A Do I recall receiving it?

Q Yes, sir.

A No, sir, I don't recall.

Q You don't recall?

A No. I can't say that I do.

Q At your deposition you testified, referring to this Exhibit G at page 234 of your transcript "When did you see it priorto that time?

"A I believe this was sent out to me with one of my monthly financials, monthly statements of account. I don't believe this was for my consumption alone."

Do you recall giving that answer?

A Yes, I do now.

Q And it was customary for McDonnell & Company when financial statements such as this were ready to send it to customers in their account statements, was it not?

A Annually.

Q Now, Exhibit 16 is your claim to the liquidator for $20,000 for your stock which you claim was fraudulently sold to you, and in this claim you list the number of document given to you which you claim were false and misleading. Among these documents is this Exhibit G.

MR. BEEBE: Objection. I don't know if that is one of those that is listed as being false and fraudulent. In fact, I thought he said just the opposite when he was questioned about this on direct.

MR. BROOKS: Let me read paragraph 6.

THE WITNESS: Of what, sir?

MR. BROOKS: Of Trial Exhibit 16. It lists a number of documents. The last one, the last sentence, reads "Claimant also obtained a financial statement dated October 31, 1968, which is attached hereto as Exhibit G."

Then the next paragraph 7 begins "The information contained in the financial data supplied to the plaintiff was materially false and misleading."

Q Didn't you mean there to say that this statement is false and misleading and you were in part basing your claim

on it?

A I have consistently maintained, sir, that I don't know when I received this particular statement. I thin'--

THE COURT: That is not the question, Mr. McDonnell.

Read the question back, and please listen carefully.

THE WITNESS: Yes,sir.

(Question read.)

A If it were not included, as I believed that it was not included, I wouldn't have been basing my claim on it.

Q I fail to follow you, Mr. McDonnell.

A The documents that were furnished to me in connection with my purchase of this stock are here. I do not believe that this was a part thereof.

Q I am not saying that Tom McKay sent it to you with those other documents, but it seems to me a fair reading of your claim says that you had this financial statement before you bought your stock and that there is something wrong with it and you relied on it and it is part of the fraud. Now, is that true or is not?

MR. BEBBE: Objection to the characterization.

THE COURT: Overruled.

A Maybe you better read it.

THE COURT: Strike out the "fair reading" and let the rest of the question stand and read it again.

A That I had this prior to my purchase of the stock?

Q And had read it.

A Whether I had it prior or not I would have to say that I regard this as being suspect as to its accuracy.

Q Wasn't the reason that it was attached to your claim for your $20,000 was that it had in some way misled you when you arrived at the decision to purchase that stock? Otherwise, there was no reason for attaching that statement as Exhibit G to your claim.

MR. BEEBE: Objection to the conclusion that is expressed in that question.

A Well, Mr. Brooks, you are telling me that I prepared this claim individually. This was prepared by my counsel.

Q It was signed by you, was it not, sir?

A Yes sir, it was. Now, we have a very thin distinction here that we are working on.

Q Well, did you or did you not get that financial statement before you bought your stock?

A I don't believe I did, sir.

Q You said to the contrary when you swore to your

answers to your interrogatories, did you know that?

A I said to the contrary?

Q Yes, sir. Would you like me to read them to you?

A Yes, sir. I wish you would.

Q I have to start with interrogatory number 43.

"What misleading information, if any, was given to you at the time you purchased your stock in McDonnell & Co. in 1969?

B: If such information was given to you, what person or persons gave it to you?"

"Response: I was not informed that McDonnell had critical operational and financial difficulties. In addition, I was not informed that McDonnell had in the months prior to as well as at the time I was required to purchase the 300 shares in McDonnell common stock been in violation of NYSE rules as well as Rules and Regulations of the SEC."

The answer to B is Thomas McKay.

interrogatory number 44.

"If your answer to the preceding interrogatory is in the affirmative, identify, A, the occasion or occasions on which such misleading information was given, and, B, any documents which were misleading with regard to the financial condition of McDonnell and the respect in which they were

misleading.

Response: A. At a meeting at McDonnell in approximately February of 1969.

B. This is in response to the question of the documents given.

"Statement of financial condition of McDonnell as reported on October 31, 1968."

A Well, Mr. Brooks, I think there was a statement in there for 1968, but I have no way of knowing that the statement that was in there was this one. As a matter of fact, I think there was another one.

Q Do you know of any other statement of financial condition?

A Yes, sir, I think I can find it.

Q As of October 31, 1968.

A I think I can find it, if you just give me a minute here.

MR. BEEBE: Are these the supplemental answers or the original?

MR. BROOKS: Supplemental.

A There is this statement for 1968.

Q That is not a financial statement. You know better than that.

MR. BEEBE: Objection, your Honor. Arguing with

the witness.

THE COURT: Yes, strike it out. It is not a proper question.

Q Do you find any other statement of financial condition as of October 31, 1968, attached to Trial Exhibit 16, sir?

A Other than what I have in my hand here, no.

Q And what do you have in your hand?

A What do I have in my hand? I have the exhibit you are talking about.

Q What is that?

A Statement of financial condition for '63, '64, '65, '66, '67, profit and loss statement eight months of 1968, 1967, '66, '65, '64, and '63.

Subordinated debentures as of '64, '65, '66, '67, '68.

Retained earnings as of '64, '65, '66, '67 and '68. Eight months of '68, I believe. Six months of '68.

Q Do you find any other document attached other than the October 31, 1968, statement of financial condition that is so described as a statement of financial condition?

A Any other document? I don't believe so, sir, no.

MR. BEEBE: Attached to what? We have had a lot of documents we have been talking about.

MR. BROOKS: Attached to Trial Exhibit 16.

THE COURT: Please, there is no basis for your interposing at this point. If you have an objection you make it.

Q Do you find any other document so entitled?

A No, sir.

THE COURT: Ladies and gentlemen, we will stand in recess until 10 o'clock in the morning.

You will heed my admonition not to talk about this case with each other or with anyone else, and continue to keep an open mind. Good night.

(Adjourned to 10 A.M., May 1, 1975.)

MARGARET MARY McDONNELL MURPHY,
et al.

v.

McDONNELL & CO., INC., et al.

May 1, 1975,
9:45 A.M.

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(In the robing room, all counsel present.)

THE COURT: Now, what is the problem?

MR. BEEBE: It is serious enough so I thought I would come in.

Here is what happened. Yesterday, as you will recall, we had argument at one point about excluding Mr. McElroy as a witness and I really had no serious problem with him because he didn't have anything to do with the witness on the stand, I don't really think.

The argument took place at pages 358 to 360. There was some mention of another witness but the issue didn't appear to be ripe at that moment. Mr. Brooks said he was going to call another witness. I said, "That hadn't occurred yet. I don't think Mr. Bishop is here yet."

Mr. Brooks said, "Well, if he comes."

I discovered after the trial yesterday that Mr. Bishop had been there and has been secretly -- I will explain what I mean by that -- in the courtroom for several days.

I would like to relate what happened the day before yesterday. There was a gentleman sitting in the audience. I asked my friends who had been on the case before I was here who he was. They said they thought he was Mr. Stewart Jackson, who is, I believe, Mr. Brooks' senior partner.

I went over to him after the day when one of Mr. Brooks' associates was there, Mrs. Lichstein or Miss Lichstein, and introduced myself, thinking I was introducing myself to Mr. Jackson. I said that my name is Walter Beebe. He didn't say anything. He just smiled. I said, "Are you Mr. Brooks' senior partner?" He didn't say anything. I thought that was funny. I guess he said, "You could say that."

Then I said, since no one had introduced him, "What is your name?"

He turned to Miss Lichstein and said "Do I have to answer that?"

I said that this is peculiar and I am not going to get involved in this. I backed away and left for the day.

Then, yesterday, the part I just read you, and another thing that went on in the discussion of that motion yesterday was mention whether this person we were talking

about, Mr. McElroy, would be influenced by anything he heard anyone else say, whether there would be a poisoning of his testimony. I had to say no to all those questions. I said "Can we take this up when it happens? It is kind of hypothetical at this point."

Your Honor said we would go forward on that basis.

THE COURT: Have you taken Mr. Bishop's deposition already?

MR. BROOKS: Mr. Dubin took his deposition for four days. I don't see how anybody can say there is any secret about his attendance.

MR. BEEBE: I asked Mr. Dubin and Mr. Dubin really thought that Mr. Bishop was someone else. He didn't recognize Mr. Bishop as such.

THE COURT: This goes to the question as to whether you have gotten his story out of him on paper and signed. I assume that you have.

MR. BROOKS: It has been signed and filed.

THE COURT: If that is so, that makes a difference, too.

MR. BEEBE: I still can't believe this argument we had, "Well, if he comes," said Mr. Brooks on the record, when he had already been there and was there when we were

making that very argument.

Last night I went home and did some research on the question of exclusion of witnesses in civil cases. It turns out there is a long history of sequestration of witnesses. Now the federal rules, which become effective in two months from today, has a section particularly pertaining to exclusion of witnesses and making it mandatory if it is requested.

The purpose of the statute, as it says in Wigmore, is "To detect falsehood by exposing inconsistencies"--

THE COURT: May I see the rules? I think it is discretionary at this point.

Where is it in the new rules?

MR. BEEBE: 615, your Honor. It talks about natural persons, officers.

MR. BROOKS: Does it talk about parties?

MR. BEEBE: Parties, yes, it does.

THE COURT:That is going to change the rule. On the other hand the rule permits -- to put it the other way, the upcoming rule does not authorize exclusion of an officer or employee of the party who is not a natural person designated as its representative by its attorney. That's what Mr. Brooks is talking about here.

MR. BEEBE: I think what that refers to is if

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you sue someone, which we did, the stock exchange at the time was an unincorporated association and we sued it by its president, Mr. Robert Hack. He was, of course, the designated party. Mr. Bishop is one of the many witnesses at the stock exchange and he comes in and out at various and important junctures. In fact, after yesterday's exchange Mr. Brooks brought out of our witness on page 396 and 397 testimony about a meeting with Mr. Bishop.

So my motion today, your Honor, and I think based on all the circumstances it is warranted --

THE COURT: Let me stop you a minute. You say that Mr. Brooks cross-examined your witness in a particular way and your conclusion from that is that Mr. Bishop may have given him some suggestions as to how to cross-examine. Is that what it amounts to?

MR. BEEBE: My suggestion is that at pages 396 and 397, Mr. Brooks questioned my witness as to a meeting my witness had had with Mr. Bishop, and unbeknownst to me Mr. Bishop was sitting in the audience at that time listening to how that version was, so that when he has his testimony he will have heard and will have been --

THE COURT: I appreciate that. You know, the problem is a laywer has to be in a position to prepare himself to examine. If he had wanted to have Mr. Bishop listen to

the witness and say that that isn't my recollection of it at all. Why don't you ask him whether the witness' recollection isn't all wet? He has a right to do that.

MR. BEEBE: There is a transcript here for one thing. For another thing that's what the rule is designed to prevent, as pointed out by Wigmore.

THE COURT: This is number 3, "A person whose presence shown by a party to be essential to the presentation of his cause." That showing hasn't been made in exact words but I can certainly see that a lawyer would want to be able to consult with one of his key principals during the course of the trial. What is your memory, what is your recollection of this or that?

MR. BEEBE: That eats the whole rule up.

THE COURT: It is a question of balancing and it is a troublesome area. Where you have a deposition of this man in which you pinned him down, and if you took four days of testimony, you have, what, 500 pages?

MR. DUBIN: About 300 pages of testimony.

MR. BROOKS: Four volumes. I thought it was in the four hundreds.

THE COURT: My goodness, I think you would have the reservation pretty well staked out at this point.

MR. BEEBE: I wish that were so. The reason I

make the motion and the reason I even considered making the motion is that I couldn't believe that this whole transaction, heard as it did with Mr. Bishop sitting there, when we weren't told about it and kept secret. I thought I was being open. I think that Mr. Bishop should be disqualified as a witness--

THE COURT: Oh, no. I will not do that. I definitely will not do that. Don't bother to argue it. This matter didn't come up until yesterday in the first instance and I am certainly not going to do that.

MR. BEEBE: At very least, your Honor, I would ask that Mr. Bishop, who did not consult with Mr. Brooks as the day went along or as the past few days have gone along, he hasn't been sitting at the witness table, he hasn't been introduced as a witness who was present there. And on top of that, your Honor, he and Mr. Brooks, if there are any two people in the world who know these transactions, it is certainly they because they tried the case out in California, Dempsey Tegler. Same contents. The whole thing has been going on many, many times.

MR. BROOKS: May I be heard, your Honor?

THE COURT: Yes.

MR. BROOKS: It astounds me that anyone could say that we kept Mr. Bishop's presence a secret after Mr.

Dubin spent four hard days with him taking depositions.

Secondly, Mr. Bishop is the senior officer of the stock exchange in charge of this area and this lawsuit. He is my client. He tells me what to do sometimes; I ask him for advice, I ask him for files, I ask him to supply other employees as witnesses, and I discuss how this case should be conducted.

I notice that Mrs. Murphy and Mr. McDonnell have been sitting here as parties assisting counsel, listening to the testimony of others, where it is really important who said what to whom.

I am astounded by this motion in a civil case. I have never heard of it before, for an officer or a party.

MR. BEEBE: I think the difference between Mr. Bishop and our clients is, of course, obvious. That our clients are parties and Mr. Bishop was never named individually and he is, of course, not a party. He is one of many witnesses.

The truth of what people said at various key junctures on the stock exchange side at key meetings is one of the central issues in this case. Mr. Bishop in his deposition contradicted the other witnesses who were lowly officials at the exchange. With him sitting out in the audience looking at them, holding their meal ticket

in his hand, he is bound to have --

THE COURT: Do you have the depositions of these other people as well?

MR. BEEBE: Yes, your Honor.

MR. BROOKS: 42 of them.

MR. BEEBE: It is very difficult, your Honor, to get out what really happened because recollections fade --

THE COURT: Off the record.

(Discussion off the record.)

MR. BROOKS: We have had a lot of lawsuits at the exchange and we have never fired an employee.

THE COURT: I think given all the depositions here given the relationship of Mr. Bishop I am going to deny this motion at this time. I won't comment on Mr. Bishop's asserted statements to you yesterday other than they appear to be the statements of a nervous man, who whatever else he is, is not necessarily your friend at this point.

So on that basis I will, in my discretion, deny the motion.

(In open court, jury present.)

J A M E S F. M c D O N N E L L, Jr., resumed.

THE COURT: Good morning, ladies and gentlemen. We have been on matters of law since about a quarter of 10. Sorry for the delay.

MR. BROOKS: Your Honor, I have a few housekeeping details. Miss Lichstein reminded me that we did not offer into evidence Defendant Exchange's Exhibits J or O, which were identified yesterday by Mr. McDonnell. I would like to do that now. J is the original version of the financial statement which was already in evidence as Exhibit G to Mr. McDonnell's claim to the liquidator. Exhibit O is a letter or memo from David Rome to Mr. McDonnell which he, I believe, did identify yesterday. He did identify the financial statements.

THE COURT: Any objection?

MR. BEEBE: No objection.

(Defendant Stock Exchange Exhibits J and O received in evidence.)

MR. BROOKS: I wonder if it would be in order to have an instruction on the role of interrogatories in a lawsuit.

THE COURT: Have you used any yet?

MR. BROOKS: I have been reading them to witnesses and asking them to respond to them.

THE COURT: Why don't you the next time you get to one establish what it is and the circumstances under which the witness answered. I think that will do it.

MR. BROOKS: All right, your Honor.

CROSS EXAMINATION CONTINUED

BY MR. BROOKS:

Q Do you recall our discussion about your answers to interrogatories?

A Yes. May I apologize for my kind of outburst yesterday? I feel rather strongly about this. If I stepped out of line, please accept my apology.

Q Don't worry about it. I think it is a trying time for all of us.

A Thank you.

Q Do you recall seeing these supplemental responses of plaintiff James McDonnell to interrogatories before?

A Yes.

Q Did you sign on the next to last page?

A Yes, sir.

Q And did you swear before a notary and sign again on the last page?

A Yes, sir.

Q And did you consider when you did that that you were making the answers that you made under oath?

A Yes, sir, I did.

Q Did you understand that these interrogatories were questions that the defendant was putting to you in written form somewhat prior to this trial when you signed them?

A Yes, supplements to my deposition, sir.

Q You recall yesterday that we were trying to ascertain exactly when you demanded the cash for the Series B debenture. I have two more exhibits that go to that point which I would like to show you. The first has been pre-marked as Stock Exchange Exhibit Y and it consists of a memo dated October 2nd. It looks like an attached two drafts of a note.

I ask you if you have seen the memo and the note before?

A I have seen the note, sir, yes.

There are two notes attached, sir.

Q Yes, there are.

A One note has notations in the margin in my handwriting. That one I must say I do recognize that one.

The second one has a notation "Copy" on the bottom of it. That is not in my handwriting, so it did not come out of my files. This first one I'm sure came out of my files.

Q Would you then detach the second note and I will then offer into evidence the memo and the first note with Mr. McDonnell's handwriting.

MR. BEEBE: There is an objection. I don't see that the demand or question of demand is relevant. I think we went far enough on it yesterday. The note was due and payable December 31, 1968.

MR. BROOKS: Your Honor, I think it is relevant.

(Pause)

THE COURT: A reasonable man might find this to be relevant, and so I will overrule your objection.

(Defendant Stock Exchange Exhibit Y is received in evidence)

Q Mr. McDonnell, the first page of Y, the memorandum, is from the desk of James F. McDonnell, Jr. Do you recall signing and sending that memorandum to the addressee on or about October 2, 1969?

A Yes, sir.

Q And it's addressed to dear Paul. Who was Paul?

A Paul McDonald, sir.

Q Can you tell us what the circumstances were for your sending this memorandum and the attachment at

about this time?

A Yes, sir. I was negotiating with Paul McDonald at that time to try to collect this money that was due on the expired note. And during this negotiation I submitted a proposed form of note. Shortly thereafter, Paul McDonald submitted to me a counterproposal, which I found to be objectionable and wouldn't accept. But this bears on that transaction.

Q And this is a counterproposal by you?

A No, sir, I don't believe it's a counter-proposal by me. I think it's the counterproposal by them, because in the margin I have written, "Change to conform to installment note, same as installment note."

I can't be positive of that, sir, but it would appear to me that this perhaps is the unacceptable note that came back to me.

Q Was the one we discarded your note? I say that because the first sentence of the memo says that "In accordance with the agreement reached at our meeting on Saturday, September 27th, I am enclosing a proposed form of promissory note for the trustees of my father's estate. If this document meets with your approval, would you kindly have same executed."

You were apparently sending him a note?

A I sent him a note, yes. Now, the note that I sent had very strict terms in it and set the note up as a very high priority note.

The note that they came back with was unacceptable because it lacked those essential features.

Now, I really couldn't tell you from reading this because obviously I am not equipped to draft a note like this. I would only be equipped to study it and consult with counsel and say, that I don't think this is strong enough. So I can't tell you here, sir.

Q At that time if Mr. McDonald had accepted the note you proposed, would that have satisfied you in respect to your duty in securing the trustee's position on the subordinated B debenture?

A Yes, sir, I think I would have been satisfied.

Q You would have taken your former note, if he adsigned it, and put it in the bank?

A Yes. That represented to me a satisfactory compromise, yes.

Q Well, do I then take it that up to this time you have not demanded cash from Mr. McDonald for that B debenture?

A No, sir, that is not accurate. I demanded

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cash on many occasions, and we had sort of a -- well, I'm too busy right now to talk about this subject, and finally we went back and forth many times and finally I had a note prepared and sent it in with this memorandum.

Q Had you presented any formal demand for cash?

A Written or -- Mr. McDonald, I want this money.

Q Well, whatever you construed to be formal.

A Formal, I did, yes.

Q Let me show you a memorandum which appears to be a wire message dated October 23, 1969, signed by you and addressed to Richard Olney, to which is attached another, it seems, an agreement with handwritten notations on it. I ask you if that is your signature on the wire message.

A Yes, sir. The wire message --

MR. BEEBE: Excuse me. Objection. It just calls for a yes or no answer.

THE COURT: Sustained.

Q Mr. Beebe wants you to answer yes or no whether it's your signature on the wire message.

A Yes, sir, it 's my signature.

Q Do you recognize the attachment, the agreement?

A Yes, sir.

Q I offer it in evidence, your Honor. I don't think I have said that it's premarked.

MR. BEEBE: May we have a bench conference on that, your Honor?

(At the side bar)

MR. BEEBE: What we have here, your Honor, in this whole area is obviously discussions of settlement negotiations by another name, attempts to settle a claim. The settlement negotiations proved fruitless. Settlement negotiations are not admissible or relevant when the claim wasn't paid and they don't have anything to do with the question of whether or not he made a demand, which I have no problem pursuing that issue or what he did in the way of a demand. Although I think it, too, is of questionable relevance because the note was due and payable on December 31, 1968. That's my point. I didn't want to talk about settlement discussions in front of the jury.

MR. BROOKS: I think this is relevant to the argument we have made to ratification and proximate cause. It's not settlement.

THE COURT: I will overrule the objection.

(In open court)

MR. BROOKS: Was the last exchange a yes to the signature?

THE COURT: I think it has been offered in evidence. There was an objection.

MR. BROOKS: It's now in evidence?

THE COURT: It's now received.

Mr. Beebe, have you any further objection to the offer other than what you have discussed at the side bar?

MR. BEEBE: Could we just have voir dire as to whether the agreement that is attached here in the exhibit to a wire message was physically attached to the wire message at the time?

THE COURT: Mr. McDonnell, do you know that?

THE WITNESS: No, your Honor, I do not know.

THE COURT: Was it a contemporaneous agreement sent together or attached or not?

THE WITNESS: I believe they were contemporaneous instruments.

THE COURT: And sent together?

THE WITNESS: Yes, sir.

MR. BEEBE: No objection.

THE COURT: Received.

(Defendant New York Stock Exchange Exhibit X was received in evidence)

Q Mr. McDonnell, is the agreement that is attached to the wire message the note that you had proposed Mr. McDonald accept on behalf of McDonnell & Company?

A No, sir.

Q Whose note is this?

A This is the note that was drafted by the counsel for McDonnell & Company sent to me for me to accept. It was the counterproposal, because this is full of my notes. In other words, I have written all over this thing.

Q Is that your handwritten word "nuts" on the first page there?

A I'm afraid so, yes.

Q Was that counsel Tom Ford who prepared this?

A Yes, sir.

Q I am going to read the wire message. It's to Rick Olney, office of the president, McDonnell & Company, dated October 23, 1969, "Please advise Tom Ford that the note he drafted for estate is unacceptable to me. Unless an accpetable note is issued promptly,

the trustees have no alternative but to present formal demand for payment of mature series B debenture. Ask him to contact my attorney, Richard Jones, telephone number 963 6420."

It's signed J. F. McDonnell, Jr.

There is an indication of the time at which it was sent and it's indicated to be Detroit time.

Does this message refresh your recollection as to whether you had made formal demand for payment of the debenture prior to October 23?

A It doesn't make my memory any better on the subject, sir. I presented the demand in the form of the jointly signed letter from my mother and myself by hand to my brother Murray and to Paul McDonald prior to this communication here.

Q And that, in your view, constituted a formal demand for payment? We discussed that yesterday, as I recall.

A Yes, sir. See, these negotiations took place over a long period of time.

Q I see that. How many different accounts at McDonnell & Co. did you receive monthly statements for? You told us that you had minor children who had a number of accounts -- two each at McDonnell & Co.

and you said you had one. At sometime you had accounts at McDonnell & Co. which you were trustee of.

As I understand it, the end of each month a brokerage firm sends an account statement to each customer. What I want to know is at the end of the month, say in the beginning of '69, how many such account statements would arrive addressed to you?

A 1969?

Q Yes, January, February, March.

A I would have had one from my father's estate, I would have had my own, of course, I would have had perhaps ten others, as many as ten others.

Q Do you recall yesterday that we discussed the practice of McDonnell & Co. annually to include in the monthly account statements of a customer their final statement for the year when it was printed.

When that custom was followed annually at McDonnell & Co., did each of those account statements arrive addressed to you have a financial statement such as this enclosed?

A That would be difficult for me to answer, sir. If they had been careful in their mailing, perhaps not.

Q How do you figure that?

A Well, that costs money.

Q They would have --

A They probably would have sent one.

Q And excluded it from all of the other account statements that were sent to you?

A I would guess so.

Q But you would have gotten at least one; they wouldn't drop you altogether from --

A I hardly think so, no.

Q When did you move into the premises of the Detroit office of McDonnell & Company? I distinguish from when you took up the duties of office manager, but when you were physically at the office?

A Right after my second conversation with Morgan.

Q That would have been about February 25th?

A Yes.

Q Was it the practice in thatoffice at the time to keep available on a table for pickup by customers or anyone who would be in the office the last annual financial statement of the company, such as this pamphlet?

A I honestly don't know, Mr. Brooks.

Q You didn't see them laying around the office?

A Well, that goes back a long time, sir. I don't know. That's the best answer I can give you.

Q We discussed yesterday various indications as to when you might have received this financial statement. I am going to ask you some questions about it.

I wonder if I might provide the jury with copies of it so they can follow along, your Honor.

THE COURT: Let's try it without doing so and see how we go.

Q Let me give you then, Mr. McDonnell, Exhibit J, which is the original of the copy attached as Exhibit G to your claim to the liquidator.

Now, whenever you received that, and I don't want to go over old ground again, but whenever you received it as a trustee and as an account holder and as a fiduciary for your minor children, would you read it?

A Would I read it, sir?

Q Yes.

A I think perhaps the first thing I would look for would be the certification.

Q I take it you would read it.

A Yes, I would glance at it, sir, yes.

Q The first thing you would look for would be the certification?

A Yes, if I got this document.

THE COURT: Mr. Brooks, I am going to reverse myself and allow you to give those to the jury.

MR. BROOKS: Thank you, your Honor.

Q Now, when you say the certification, Mr. McDonnell, when the document is opened and the title page, which says "Statement of financial condition" is pointing away from you, could you tell me what you mean by the certification, where it's located?

A It's at the bottom onthe inside and it's a report of independent public accounts, McDonnell & Com pany, Incorporated.

Q That is a certification by whom?

A Lybrand Ross Bros. & Montgomery, public auditors.

Q You explained who they were on your direct testimony, as I recall.

A Yes, sir.

Q And why do you first look at the certification?

A I first look to see that it's there.

Q Why?

A Because it lends some credibility to what goes above it.

Q Does it mean to you that Lybrand Ross Bros. & Montgomery has certified to the fair presentation and credibility of the material above?

A Yes, sir.

MR. BEEBE: Objection.

THE COURT: Yes, sustained, as to form.

MR. BEEBE: Request to strike it.

THE COURT: Yes, it will be stricken.

Q What exactly does the certification tell you about the financial material presented above it?

A It tells me that their independent auditor feels that the financial information as presented it is fairly presented.

Q Is that the result of some research that the auditor has done?

A Yes, sir.

Q Can you describe what exactly the auditor does before he can make certification?

MR. BEEBE: Objection. This person is not, I believe, here to testify -- if this is going to go on at great length in this area.

THE COURT: Well, given the objection,

Mr. Brooks, you will either have to lay a foundation or I will have to sustain it.

Q Mr. McDonnell, do you have any knowledge about what an auditor has to do before he can make a certification such as is on Exhibit J?

A No precise knowledge, no, sir.

Q Do you know whether he does anything?

A Oh, yes, sir.

Q What do you know that he does?

A He examines the books and records.

Q Do you understand his certification to be a certification of the notes to the financial statement as well as the numbers, the addition and subtraction, as shown here on Exhibit J?

A Every certification is different, sir. So it's not possible for me to say.

Q Let's just concentrate on this certification on Exhibit J?

A Yes, sir.

Q My question is: Do you understand that the certification at the bottom signed by Lybrand, Ross Bros. & Montgomery, is also a certification as to the two notes that are above the line that is immediately above the certification?

A It appears to be, sir.

Q Are you familiar with the term "a clean opinion" by an auditor?

A I am familiar with that term, sir, yes.

Q Would you tell the jury what a clean opinion means when you are talking about an auditor's certification on a financial statement?

A A clean opinion, in general, means that the

auditors make no exception whatsoever to any of the information, the financial information, that is presented.

Is that satisfactory?

Q I think it is.

Now, would you -- can you identify the Lybrand certification as a clean opinion?

A No, sir.

Q It's not a clean opinion?

A It appears to have an exception in it.

Q What is the exception?

A It states that "New York, January 12, 1969 (except as to the note to the statement of financial condition with respect to which the date is February 6, 1969."

Q Let's back up and cover the question of dates, Mr. McDonnell, to try to make that exception a little clearer.

Of what date do you understand this financial information to speak as to the financial condition of McDonnell & Company?

A As of October 31, 1968.

Q So that Lybrand is certifying that the assets and liabilities and the capital of McDonnell & Company are as these numbers show on October 31, 1968, is that

right?

A Yes, sir.

Q Now, take a look at the date that you pointed out a minute ago in the bottom left, January 12, 1969.

A Yes, sir.

Q To what do you understand that date to apply?

A I don't understand, sir, to what date it applies.

Q Could that be the date of the Lybrand certification?

A You are asking me to speculate, sir. I don't understand what it applies to.

Q Okay.

Now, following the date it says "Except as to the statement of financial condition" --

A No, sir, it says "Except as to the note."

Q Mine is a Xerox and I am having trouble reading it.

A It says "Except as to the note to the statement of financial condition with respect to which the date is February 6, 1969."

Q That ist he exceptinn which you spoke of?

A Yes, sir.

Q What do you understand that exception to mean?

MR. BEEBE: Objection. I don't see this witness' understanding about this note to this financial statement as having any serious relevance based on all the examination we have had to far about it.

MR. BROOKS: I will connect it up in a minute, your Honor.

THE COURT: All right. Please do, because otherwise I think the point is well taken.

Go ahead.

Q Will you answer the question, Mr. McDonnell?

A I am unable to say, sir.

Q Take a look at the first note above there, Mr. McDonnell:

"Subsequent to October 31, 1968, and through February 6, 1969 there was a net increase in equity capital of approximately $1,300,000 resulting from the sale of additional shares of capital stock, and a net increase in borrowings under subordination agreements of approximately $1,600,000, in order to provide capital as required under the regulation of the New York Stock Exchange. Based upon discussion with officials of the

exchange as a result of these incrases in capital and of other steps taken the corporation currently meets the exchange's capital requirements."

What do you make of that?

A Not much, sir. I mean today -- I mean I am not an accountant, so I really don't think that I can answer intelligently for you here.

Q Do you draw an inference from that statement that the firm was in capital violation?

A No, sir, I don't draw that inference.

Q Have you ever drawn that inference?

A Yes, sir.

Q When did you draw it?

A Well, when I went with McDonnell & Company and went to New York and found out what a shambles everything was in, and also found out, really, at that time what this capital thing really was all about --

Q My question is: You in the past testified that you drew an inference from this note that the firm had been in capital violation between October 31 and February 6?

A It's possible that I have, sir, and that probably would have been information that I received later which led me to b elieve in hindsight that this

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auditor, as many auditors in this country today, are in legal trouble, shall we say.

Q Let me read some testimony to you from your deposition and see if that makes any clearer the inference that could be drawn by you from this note.

Page 235 and 236 of your deposition:

"Q Mr. McDonnell, take a look at the note, the first note, and tell me whether you can determine from reading that whether or not there had been a capital violation of McDonnell between October 31, 1968 and Februray 6, 1969.

"A The inference is certainly there."

MR. BEEBE: Is there going to be more read?

My objection to this reading of this passage is it doesn't make any clear error of anything to do with refreshing recollection as to when he determined the inference was certainly there. He has so testified now that the inference is there. He testified thathe learned it later. But this reading doesn't add anything to what we already have, or push his knowledge back any further.

THE COURT: The objection is overruled.

Q Do you have the question in mind, Mr. McDonnell?

A Do I have a question in mind?

Q Do you have the question in mind?

A No, sir, I am sorry.

THE COURT: You have read the testimony to him. Now, do you want to base a question on that?

Q The question is: Does my reading of your deposition testimony refresh your recollection as to whether you were in the past able to draw the inference from the first note that the firm of McDonnell & Company had been in capital violation between October 31, 1968 and February 6, 1969?

A Going back to my deposition, I indicated that I had gained a great deal of information, and because I had that information subsequently I certainly would have to say that the inference is there,yes, that there was a capital violation. But I don't believe, sir, that if I received this statement today, and glanced at this certification, that I would reach the same conclusion if it was the first time I looked at it.

Q Let's assume that it was the first time you looked at it. What would that note mean to you?

MR. BEEBE: Objection,your Honor.

THE COURT: Overruled.

A Just a minute, I will read the note. Let me

look at the note here. That they had increased their equity capital by one million three, and they had taken on more phony capital in the way of a subordinated loan.

Q That was your mother's capital in part, wasn't it?

A I don't know, sir. I haven't the faintest idea what that money is.

Q Well, you just shortly before this statement came out had a telephone conversation on January 29 with your mother about a subordinated loan and wrote her a letter on January 30 expressing concern for her subordinated money. Don't you know that this note refers to your mother's subordination, among others?

A Can I ask you --

MR. BEEBE: Objection.

THE COURT: Let's have the question answered. It's a proper question.

A May I ask you, Mr. Brooks, do you know that that's her money?

THE COURT: No, the question is put to you, Mr. McDonnell.

A No, I do not. I'm sorry.

Q You have scrutinized financial statements of

McDonnell fairly carefully when it came to considering investments by members of your family in the firm?

A No, sir.

Q You did not?

A No, sir.

Q Let me show you a letter dated September 20, 1968, I believe written by yourself to your brother Murray. It's been premarked as Stock Exchange Exhibit W.

I ask you if you did write and sign and send that letter on or about September 20, 1968.

A Yes, sir.

Q Can you tell me what the subject matter of that letter is, what's on your mind?

A Yes, sir.

Q What was on your mind to cause you to write this letter?

A My brother Murray had asked me as a co-trustee of a trust for a sister of ours who is retarded, unable to make her own financial affairs, was it agreeable with me if he subordinated her account at McDonnell & Company. This letter pertains to my answer to him.

MR. BROOKS: I offer this in evidence, your Honor.

MR. BEEBE: No objection.

THE COURT: Received.

(Defendant New York Stock Exchange Exhibit W was received in evidence)

Q You essentially told Murray that you didn't think Genevieve's account should be subordinated, is that it?

A That's correct.

Q At least in the course of your considerations if you take a look at the last paragraph of the first page of the letter you made an analysis of some portions of the financial statement from McDonnell & Company as of October 1967, which would I suppose have been the annual statement preceding the statement which we have been considering. I would like to read the recitation that you have there of your analysis:

"The benefits to McDonnell & Company from the proposed subordination are for the most part unknown to me. I know from your October 1967 statement that borrowings under subordination agreements total some $6,049,136, or 48 per cent of your total capitalization. In addition, almost $1 million of indebtedness becomes due December 31, 1968. Obviously, I am not in a position to evaluate the significance of these factors. I

assume, whether correctly or not, that you have need for additional capital base for your present or planned operations."

My question is, doesn't this indicate a practice by you of reading and analyzing these financial statements of the company when you consider the appropriateness of your close relatives making investments in the firm?

MR. BEEBE: Objection, your Honor. He testified as a trustee.

THE COURT: Overruled.

A I testified yesterday, sir, that I considered the term or the word or the act of subordination to be a no-no.

Understand I am writing here to my brother at this time, and rather than trying to argue with him, or to create a friction, I felt that the proper thing to do was to give him some sort of additional argument as to why I didn't want this account subordinated, and so I went to the financial statement and looked at it and came up with that answer.

That corresponds distinctly with my recollection.

Q Are you saying, sir, that it was not a practice of yours to carefully read financial statements as this paragraph suggests you have read this statement?

A Financial statements of corporations I would have to say when they are submitted to me from the standpoint am I going to make an investment in it, I scrutinize as closely as I can, with limited knowledge.

however, with respect to McDonnell & Company, with which I had absolutely no connection whatever, I would have to say no.

Q Mr. McDonnell, you as a trustee had $318,000 in a debenture in McDonnell & Company. Do you mean to say you didn't scrutinize the financial statements of the corporation?

A No, sir, and the reason for that is the will specifically states that it stays in under certain circumstances.

Q You mean you couldn't have taken it out on December 31, 1968?

A December 31st, I could have, yes.

Q And it might be relevant to know what the condition of the company was on that date to determine whether to take it out or not?

MR. BEEBE: Objection as to form.

THE COURT: Overruled.

A To know what the condition of the company was on December 31st?

Q 1968, to determine whether to take it out.

A I testified yesterday, sir, that I was delinquent in that respect, that I didn't catch on until about June or July.

Q This last paragraph which I read in your letter to Murray notes that almost one million dollars of indebtedness becomes due December 31, 1968. An ingredient of that indebtedness was --

A I didn't get that.

Q An ingredient of that indebtedness--

A I still didn't get that word.

Q An ingredient?

A Yes, sir.

Q Part of that indebtedness was the $318,000 Series B debenture, wasn't it?

A I don't know, sir. I would have to look at the statement and add the figures up to be able to reconstruct what I put in this letter. But I would assume that that is the case, yes. I mean, you know --

Q And you knew that on September 20, 1968, right?

A I am afraid I must have.

Q Let's take a look at the second note on the financial statement, which is Exhibit J. That reads "That on December 31, 1968, the Series A and Series B registered subordinated debentures were exchanged, except for an amount of $80,000 redeemed for cash, for a new issue of debentures Series E maturing December 31, 1978, with interest at a per annum rate of 2 per cent in excess of the prime rate."

Do you recall having read this statement, Mr. McDonnell, on or about February or March of 1969?

A I can't say that I did, or I can't say that I didn't, but if I had it would have been meaningless, I think, to me.

Q Wouldn't that statement have made it pretty plain to you that your debenture had been rolled over for a Series E debenture?

A No, sir. Because I can't tell you at the time that I could have said that he had a hundred shares of Consolidated Edison A stock or B stock. I mean, you know, one doesn't look at that kind of detail. At least I wouldn't -- it would never occur to me to look at it.

Q Did you look at details like this when you compared the financial statements of the Ford Motor Company and General Motors and the Chrysler Company when you were

working for Henry Ford?

A No, sir. Not details like that, no.

Q You skipped right over the notes on financial statements when you worked for Ford?

A I wasn't involved in that kind of analysis. It was a market penetration analysis. Who sold how many cars in the lower end of the scale, the cheaper cars, the higher cars, and--

Q Doesn't this note mean to you, Mr. McDonnell, that all Series B debentures have been converted into Series E debentures?

A It has that inference, certainly.

Q And you were a trustee for a Series B debenture, weren't you?

A I was a trustee in my father's estate which had an investment in McDonnell & Company.

Q A Series B debenture?

A It turned out to be, but I didn't discover the exact title. I had never laid eyes on the debenture. I had never seen it.

Q I thought yesterday you told us you had a very detailed inventory of the assets of this estate when you assumed your trusteeship in 1968?

A Yes, sir, that's correct. I had a very detailed

listing that came to me from a court in New York City.

Q They didn't omit that Series B debenture, did they?

A I would rather -- I am sure they didn't omit it.

Q Let's take a look at the message that is on this financial statement, Mr. McDonnell "To our valued customers." In the second paragraph halfway down Murray McDonnell reports to the valued customers that "Therefore, we are installing a highly automated system for telecommunications and data processing in which we have made a substantial investment."

Did you know that to be a fact in and about February of 1969?

A No, sir. No.

Q Do you recall reading that in the financial statement?

A No, sir, I do not recall having read this note.

Q Do you recall reading the next sentence which says "The completion of the second stage of this system is imminent"?

A Sir, I think I just testified that Ido not recall having read this note.

Q Did you have any knowledge of that fact at that time independent of reading the note?

A At that time?

Q Yes.

A No, sir, not at that time.

Q How about the next paragraph, where it says "The computerized system will significantly lessen the inconvenience to customers which are partially due to errors made by overworked personnel and additionally are caused by delays in transferring and receiving securities from banks and other brokers."

Didyou read that at that time?

A Mr. Brooks, I think that I testified that I did not read this note.

Q Did you know that at the time?

A Yes, sir, I had some knowledge of that.

Q Things were pretty fouled up?

A No, sir, I didn't say that. I said I had some knowledge of that.

Q What did you know?

A Because I had been receiving statements, and there had been errors in the statements, and that I had been called upon from time to time to call Mr. Crane in the Detroit office and say "I just got a statement here and there is a wrong dividend, or a wrong this or that entry in the statement" and he would undertake to correct it or have it

corrected.

Q How long had these errors been occurring?

A They occur today in Shearson Hammill Hayden Stone.

Q It is just normal?

A Yes. It occurs all the time.

Q Nothing was different at this time than today?

A If it was more pronounced or something, you are getting at that question?

Q Yes. At McDonnell & Company.

A I don't recall, sir.

Q The next paragraph goes on to say that "McDonnell & Company has taken on new leadership in the person of Lawrence F. O'Brien, key adviser to two presidents." Did you know that at the time Mr. O'Brien came aboard.

A Did I know about Mr. O'Brien when he came aboard?

Q That he joined the company.

A Independently of this note, yes, I did know that.

Q Did you think that was good or bad for McDonnell Company?

A I thought it was awful.

Q Why?

A Well, first of all, it was inconceivable to me that the New York Stock Exchange would allow a man who had had no connection whatsoever with the securities business

to come in and head up one of their right hand branches, you know, tentacles.

Q Tentacles?

A Maybe it is a poor choice of words, but one of their branches.

Q Hadn't Mr. O'Brien just reorganized the Post Office Department before he came aboard?

A Sir, I have read many articles on the Post Office, and I would have to say disorganized.

THE COURT: The answer is an opinion.

A It is an almost universally held opinion, sir.

Q What did you think of Mr. O'Brien's organizational abilities?

A I was not able to observe that for any period of time, sir.

Q When did you talk for the first time to your brother Murray about the so-called roll over of the debentures?

A In the New York office, sir.

Q When?

A July or August of 1969.

Q What did you say to him?

A I will have to refresh my memory here as to what I said to him.

I told him that I had not authorized that, and that

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mother hadn't authorized the roll over of the debenture.

Q Wasn't the date you first talked to Murray about the debenture when you presented him with that September 12th letter that we have discussed from time to time?

A I am not sure, sir. It was -- I really can't answer the question. I don't know.

Q Let me try to help you by reading from your deposition.

A All right.

Q Page 156.

"Q Tell me when this first conversation with Murray about the Series B debenture took place?

"A When it took place?

"Q Yes.

"A I am sure it took place the day that I formally submitted these lettees to the board of directors.

"Q That would be on or about September 12, 1969, which is the date of the letter?

"A Mr. Brooks, I don't want to say or have it inferred here that the letter of such and such a date, my mother's and my own joint letter, was delivered precisely on the date that is on there but it was very close to that time."

Does that refresh your recollection?

A Yes, sir. Yes.

Q Can you tell me anything else that Murray said other than what you have testified to when you first discussed this matter with him?

A No, sir. I don't recall that he said anything other than to shrug his shoulders and walk into his office. He didn't give the appearance of being very friendly toward me at that time.

Q Did he say that your mother had given her consent as to the roll over?

A No, sir.

Q Did he admit that your mother hadn't given him consent?

A I didn't catch that question.

Q Did he admit to you that his mother had not given consent?

A No, sir. I said he shrugged his shoulders and walked into his office.

Q Mr. McDonnell, I think you have 11A up there. That is the claim of the trustees to the liquidator.

A No, sir, I don't have that.

MR. BROOKS: I ask Mr. Beebe to furnish those to you.

MR. BEEBE: I think we arranged to have the exhibits

neatly placed over here so that either counsel that wants them can have access. The Exhibits 1 through 28 are right here in sequential file folders for anyone's access.

MR. BROOKS: May I pull out the exhibit?

MR. BEEBE: That is what I am inviting you to do, in my own way.

Q Here is 11A, the claim of the trustees to the liquidator.

Who prepared that claim?

A My counsel,sir. One of my counsel.

Q A lawyer?

A Yes, sir.

Q And I take it the information was furnished to him by yourself and your mother?

A Yes, sir, by me.

Q He didn't meet with your mother?

A I think he did, I think he did.

Q You think he did?

A Yes, sir.

Q Did he come to New York to meet her?

A No. I believe this was drafted here in New York by the firm of Davis & Cox.

Q I see. Take a look at paragraph 12 of the claim. That says, "Anna McDonnell does not recall ever at any time prior to her receipt of the letter dated August 4, 1969," which is Exhibit 7 of this claim, "having been advised either orally or in any other manner by anyone of the purported exchange of the Series E debenture for the Series B debenture. James F. McDonnell, Jr. is certain that at no time prior to his discovery of the letter dated August 4, 1969, Exhibit 7, was he ever advised either orally or in any other manner by anyone of the purported exchange of debentures."

My question, Mr. McDonnell, is, was it a matter of some care and concentration that your mother makes the

statement that she does not recall and you make the statement that you are certain?

A I don't have the faintest idea, Mr. Brooks.

Q That was not a topic that you discussed with anyone, I take it?

A Not to my knowledge, no, sir.

Q That must have been put in there by the lawyer as a result of his investigation, I suppose?

A It is an element of someone's drafting a paragraph, sir. I am not the author of that paragraph.

Q You have told us that your lawyer was and he met with you and your mother to get the information; right?

A Yes, sir.

Q Now, I take it it was your conclusion that your brother Murray wrongfully exchanged the Series B debenture for the Series E debenture; is that right?

A Yes, sir.

Q Did you ever bring any legal proceedings against your brother Murray on that claim?

A No, sir.

Q Did you ever seek to bring any private arbitration proceedings against him, for instance, before the New York Stock Exchange's arbitration panel?

A No, sir.

Q Did you know the New York Stock Exchange had a Bureau of Inquiries and Complaints?

A No, sir.

Q You didn't study that at the time you took that branch manager's examination?

A I must say that I remember something to the effect that there was an arbitration panel to take care of problems, as I recall, between brokerage houses. I thought that was the essence of what their arbitration was.

Q Or between customers or investors and brokerage houses and brokerage houses perhaps?

MR. BEEBE: I object, your Honor. It is just irrelevant.

THE COURT: He says he doesn't remember. Sustained.

MR. BROOKS: I withdraw the question.

Q How did the trustees of your father's trust, your mother, yourself and your brother Murray, make decisions?

A The only decisions that would have been required would have been if the research department at McDonnell & Company recommended a change of the sale of a security and the purchase of another. In that event, why my brother Murray would call me and in many instances that was reduced--the decision was reduced to writing. In some cases it might not have been.

I don't recall that very often there were many changes made in the composition of the assets of the trust.

Q But for those decisions that were made, they were made orally and then sometimes reduced to writing and sometimes not, I take it is your testimony?

A Yes, sir.

Q When do you believe that the debenture, Series B or Series E, whatever it was or whatever it was supposed to be, became worthless?

A I think I'd have to say about August of '69.

Q Did you believe that at the time?

A Did I believe it in August?

Q Yes.

A Yes, sir, I did.

Q How about the preferred stock that was an asset of the trust?

A I would have to answer the same way for that.

Q Why did you wait until September 12th or later to make a demand for the debenture?

MR. BEEBE: Your Honor, I think we are getting repetitious. This was gone over extensively yesterday. If there is going to be a long line on this, I object.

THE COURT: Overruled.

A This would have all been in the hands of the lawyers.

at this stage of the tame.

Q That was a legal decision, I guess?

A Oh, yes, sir.

Q Did you advise the lawyers when you thought the debenture had become worthless in August?

A I'm sure I told you exactly what I said yesterday, that the company was losing money at the rate of two million dollars a month and there was just no hope. Therefore, it follows that these securities are worthless.

Q Do you know what the term surcharge means, Mr. McDonnell?

A Sounds to me like a New York City tax, 8 per cent or something.

Q Have you ever heard of trustees sometimes getting sued for bad investments they might make by beneficiaries of the trust?

A Yes, sir.

Q Was that a concern to you at the time you wrote that September 12th letter?

A No, sir, I don't believe that entered my head at the time.

Q You weren't simply writing that letter to keep the record straight, were you?

A No, sir.

Q How long had that preferred stock been in the trust estate?

A I don't know, Mr. Brooks, because McDonnell & Company was a partnership when my father died in 1958, and obviously there must have been some sort of a reorganization somewhere along the line.

Q Back about the time that the firm was incorporated?

A I don't know. I have no knowledge of that.

Q Well, do you have any knowledge of the preferred stock being purchased or sold at any time?

A His preferred stock?

Q Yes. The asset of the estate which was that

last claim on the chart.

A No, sir.

Q It just sort of stayed there, didn't it?

A I mean, the accou. .ing came to me fromthe court and I am morally certain that that preferred stock was on that accounting.

Q You never did anything with it, sold it, purchased it, pledged it?

A No, sir.

Q It stayed just the way you got it: right?

A Yes, sir.

MR. BROOKS: If I may, your Honor, I would like to open the chart up again.

THE COURT: All right.

Q You see the second claim of your mother for approximately $1,400,000?

A Yes, sir.

Q Do you know whether all of that amount was contributed by her to McDonnell & Company on or about January 29, 1969, or whether only a portion of it was?

A I don't know, sir, specifically. I mean, if you gave me some backup data I'd be able to answer you. But you are asking me here today and I can't truthfully answer that.

Q Do you know whether any part of that $1,400,000 was already contributed to McDonnell & Company on January 29, 1969?

A It's a possibility.

Q Possible, but you don't know how much?

A No, sir, I do not.

Q I am going to move on to another topic, Mr. McDonnell.

THE COURT: Then why don't we take our break now. We will stand in recess.

(Recess)

(In open court; jury present)

BY MR. BROOKS:

Q Before we broke, Mr. McDonnell, I was about to show you a document on the letterhead of McDonnell & Company dated October 16, 1969, which I have pre-marked Exchange Exhibit R. I would like to show you that now. (handing)

Do you recall having received that at or about the date of October 16th?

A I believe I do, sir.

Q And would it be fair to describe this as a notice to the stockholders about a stockholders meeting to be held on October 27th and an explanation

of the agenda of the matters to be considered?

A I believe that's what it says, sir.

MR. BROOKS: I offer this.

(Pause)

MR. BEEBE: My only objection is I cannot see any relevance.

THE COURT: Well, that being the only objection, I will overrule it.

(Defendant New York Exchange Exhibit R was received in evidence)

Q This notice to shareholders of a meeting coming up and the subject matter provides an explanation of the recapitalization that we have talked about before. Is the description of that recapitalization in this document your understanding of the way it was to work?

A Mr. Brooks, I'm sorry, but when I received this particular document I noticed that it was the calling of a special meeting on October 27, 1969, and I'm afraid, sir, that that's as far as I got with the document because I did not have any intentions of attending that meeting.

Q So you didn't read it?

A I may have skimmed through it, sir, but I

can't tell you now what's in it because I don't know that I paid much attention to it.

Q Well, did you have an understanding at the time about how this recapitalization was supposed to work?

A In broad outlines, I think, yes, sir.

Q Would you take a look at the letter and see if the broad outlines you had in mind accord with the letter describes the way the recapitalization was going to work?

A It will take a few minutes.

MR. BEEBE: I object.

THE COURT: Is this relevant?

MR. BROOKS: I think this presents in a nutshell the way this recapitalization --

THE COURT: Then you have the letter in evidence.

MR. BROOKS: Yes, but I'm not sure that that's the way it did work and that's why I have asked the witness if it's in accordance with his recollection.

THE COURT: You don't need the letter for that. Either the letter is the evidence or his recollection is the evidence. But him reading the letter to compare it with his recollection of the letter is not evidence.

MR. BROOKS: I will take the letter. I withdraw the question.

Q Mr. McDonnell, do you see in the first paragraph of page 2, the second sentence, which reads "In addition, last August 12 a member of the McDonnell family sold a portion of the securities in her account in exchange for a subordinated note"?

A Yes, sir, I see that.

Q Do you know who that member of the McDonnell family was who sold those securities?

A I don't think so, sir.

Q If I suggested it was your sister-in-law Marjorie McDonnell, would that refresh your recollection?

A You mean Murray's wife?

Q Yes.

A I really don't -- I don't know, sir.

Q Okay.

Was the firm of McDonnell & Company selling off its branch offices in August?

A I believe so, yes.

Q And that was part of the program that Paul McDonald advised to retrench?

A Yes, sir.

Q Did you understand McDonnell & Company had a profitable rights business?

A I had heard that for many years.

Q In fact, it was noted as the rights firm on the New York Stock Exchange, wasn't it?

A I think that is a fair assessment, yes.

Q Could you tell the jury what a right is?

A It's a very detailed -- I am trying to make it as simple as possible, or think how to make it as

simple as possible.

Normally, when a corporation issues stock to a stockholder under certain state laws and under the bylaws of the corporation the present stockholders are given what's known as a peremptory right. The reason for that is that if you own stock in a corporation and your interest was, let's say, one per cent, if the corporation went around and sold stock to other people, not giving you the first right to purchase the new stock, you would wind up with less than one per cent. In other words, it would dilute your interest.

So corporations in the United States follow -- some corporations in the United States follow the practice when they issue new securities or new common stock that they give the present stockholders the right to subscribe to the new shares. It's a prior right.

Because it's a privilege given to you, that privilege, represented by a piece of paper, is traded on the floor of the New York Stock Exchange. If you don't want your right you can sell it. It has a certain value. If you want more rights, you can buy more rights.

Now, that's the best I can do with that.

Q I thought that was quite good.

And when these rights were purchased and sold

on the floor of the New York Stock Exchange, McDonnell was the specialist that handled that function?

A I believe that is accurate, yes, sir.

Q And as such it had a profitable specialty there, did it not?

A We would have to specify what time we are talking about. I assume sometimes you make money in this business and sometimes you lose.

Q I will accept that, sir.

Say in about August of 1969, did you know who the subordinated lenders were to McDonnell & Company, and the amounts in which they loaned?

A Yes, sir.

Q Could you identify them for me, and the amounts, when you identify the name?

A If you would be good enough to give me the list, sir, I would be able to identify.

Q Okay. Let me just name off a few names. I can't vouch for the fact that I won't miss some small subordinated lenders someplace or another.

A I don't want to vouch for -- there must be an official list somewhere.

Q I just want to know what you recall. How about your sister Anne McDonnell Ford, and now

she is married to Mr. Johnson, isn't she, by August of 1969?

A I believe so, sir.

Q Was shea subordinated lender?

A I believe so.

Q Do you recall the approximate amount of her lending?

A That would be a guess.

Q Your best recollection?

A You can't give me the listing, and then I can say yes, that's right.

Q I could read what you testified at your deposition, if you cannot recall?

A That is a year or so ago.

THE COURT: Mr. Brooks, is this his memory as of the time or as of today?

MR. BROOKS: As of today.

THE COURT: I don't see it's of any relevance to have him state what his present knowledge is.

MR. BROOKS: I guess I misspoke, your Honor. Let me change it. What he knew at the time, andrecalls of what he knew now at the time.

THE COURT: All right.

MR. BEEBE: Which time?

MR. BROOKS: August 1969, when things started looking bad.

MR. BEEBE: Objection to the last characterization.

THE COURT: Yes, strike it out. Attorneys comments are not evidence.

Q Did you know in August of 1969 how much your sister Anne had loaned to McDonnell & Company?

A I don't want to say something different than I said in my deposition, so I am going to pick a figure. $3 million? Was I close?

Q Right on the button.

How about your sister-in-law Marjorie, who was Murray's wife?

A $300,000. Three or four hundred thousand.

Q You testified at your deposition, on pages 299 and 300, that Marjorie had subordinated in the area of $3 million.

A My sister Margaret Mary?

Q No, Marjorie.

A Oh, yes. Murray's wife.

Q Yes. You call her Peggy, I guess.

A Yes.

Q Peggy, is $3 million about right?

A Yes, sir.

Q And that was your knowledge in August of 1969, wasn't it?

A I believe so. In 1969 I had a list right there so I knew what it was.

Q And Murray, how much did he have subordinated in August of 1969?

MR. BEEBE: I object to this on the ground that whatever this witness' knowledge or not knowledge of these particular facts in August of 1969 has nothing to do with the issues that are right here. What he knew at that time about this particular subject is genuinely irrelevant. If they want to put in some document to prove what the facts were at that time that would be another story.

THE COURT: Overruled.

Q Do you know what Murray's subordinated investment was in August of 1969? I mean did you know in August of 1969 what his investment was in August of 1969?

A Yes, sir, I did know that one in part. There were special circumstances. It was $1,685,000.

Q How about your mother? You knew what she had invested, didn't you?

A Yes, sir. $1,400,000.

Q How about brother Morgan?

A It would have been somewhat similar to my sister Margaret Mary.

Q And of course she was an investor in the amounts we have heard discussed in this trial?

A Yes.

Q And anyone else?

A Anyone else as a subordinated lender?

Q Yes.

A I don't remember, sir.

Q What about the investment of your brother Sean's estate? Was that still invested in the firm in August?

A As I recall it was, sir, yes.

Q Do you know the amount of that investment?

A No,sir.

Q Do you recall how Murray got that $1,600,000 that was invested in subordinated account in August?

MR. BEEBE: Objection, your Honor. Irrelevant.

THE COURT: Come around to the side bar.

(At the side bar)

THE COURT: Mr. Brooks, where does this take you if you can depending on what answer you get?

MR. BROOKS: Two things. It shows the McDonnell family was so heavily invested they didn't dare suggest that the firm be closed because the family would go down the drain, and it shows that Murray was putting money in the firm in April when I believe the plaintiffs claim things really looked bad, and which we disagree with.

THE COURT: Your question was where Murray got the money, isn't it?

MR. BROOKS: It will show he went out and borrowed it.

THE COURT: Onthe street?

MR. BROOKS: From Citibank.

THE COURT: Overruled.

(In open court; jury present)

MR. BROOKS: Perhaps you could read the question, Mr. Reporter.

(Question read)

A Yes, sir, I seem to recall that he borrowed the money from a bank in New York. I don't know which one. And put it in his -- personally borrowed the money and put it in his subordinated account.

Q Do you recall when he made the deposit to his subordinated account?

A I have no knowledge, sir.

Q Had it been before August?

A I don't have any knowledge of that, sir.

Q After it was all over and McDonnell had entered liquidation, did you ever make any complaint to your brother Murray about what you now claim was fraud worked upon you in the spring of 1969 in connection with your purchase of your approximately $20,000 worth of voting stock of McDonnell?

A Mr. Brooks, after this occurred there was considerable animosity between my brother Murray and myself, and I would have to state that I had no conversation with him.

Q How about brother Morgan? Did you ever complain to him about the fraud that you claim was worked upon you in that spring?

A Yes, sir, I discussed it many times with him.

Q Did you ever sue Morgan?

A No, sir, I never sued Morgan and there wouldn't be the slightest reason for ever doing so.

Q How about Murray?

A That's a matter of personal choice.

Q How about the estate of Tom McKay?

A No, I never considered it.

Q Did you ever make any complaint to the New York Stock Exchange that you thought McDonnell had defrauded you?

A Through my lawyer, sir.

Q In this lawsuit?

A Yes, sir.

Q No other way?

A No, sir. I don't think I would know how to do it, other than in that way.

Q When you filed this lawsuit in which, among other things, you are making a claim as trustee, do you recall calling your brother Murray and telling him, in essence, "Don't worry, I am not going to sue you"?

A No, sir, I don't recall that.

Q Let me show you this and ask you if it refreshes your recollection.

MR. BROOKS: Can I describe what I am showing him?

THE COURT: No.

Q Would you read that, please? (handing)

A This appears to be --

THE COURT: No. Does it refresh your recollection.

A Where the check mark is?

Q Between the red slashes is the material that I think you might refresh your recollection from.

A No, sir, it does not.

Q It does not refresh your recollection?

A No.

MR. BROOKS: I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. STEIN:

Q Mr. McDonnell, you were here in the courtroom several days ago when you heard your sister Margaret Mary testify in this case?

A Yes, sir.

Q Did you hear her give testimony -- that is, evidence inthis case -- that in her view brother Murray made a terrible mess of things at McDonnell & Company in 1969?

A I believe I did, sir, yes.

Q And didn't you also testify this morning that everything was in a shambles during 1969 -- that is, at McDonnell & Company?

A I believe I made that statement, sir, yes.

Q Now, do you share your sister Margaret Mary's view of Murray's conduct of McDonnell & Company, that he made a terrible mess of things?

A I wouldn't want to single out Murray McDonnell as being the sole source of this, no.

Q Do you think Murray McDonnell made a terrible mess of things?

A He was the chairman of the board and chief executive officer, and he obviously must have contributed, sir.

Q Did he make a substantial contribution?

A I think so.

Q You just told Mr. Brooks that you have never made any claims against Murray alleging that he defrauded you in some way. Do you recall that testimony?

A Yes, sir. Any legal claims?

Q That's correct. And you said, I believe, a minute or two ago, that this was a matter of personal choice, is that correct?

A Yes, sir.

Q You made a claim in this receivership proceeding in Delaware, have you not?

A Yes, sir.

Q So you exercised your personal choice to sue the receiver of McDonnell & Company, didn't you?

A Well, sir, I was advised by counsel that I would-- if I didn't make my claim to the receiver that I would be making a legal error, and forfeiting rights, would you call it or something like this.

Q Did somebody compel you to sue the receiver or did you exercise a choice to sue the receiver?

A Well, Mr. Stein, you are presupposing, I think, that I know --

Q The question can be answered yes or no, Mr. McDonnell

A I don't know that I sued. Did I sue the receiver, or did I file a claim with the receiver?

Q I will take it either way, Mr. McDonnell. You exercised a personal choice, did you not, in filing the claim against the reciver?

A I was under advice of counsel, sir.

Q And that was your choice, was it not?

A Under advice of counsel it was my choice.

Q And it was your choice not to exercise any right to sue your brother Murray. That was a personal choice was it not?

A That's right.

Q And you exercised a personal choice not to sue your brother Morgan, didn't you?

A Yes, sir.

Q Is it your view, Mr. McDonnell, that an investment in a brokerage firm involves a high degree of risk?

A Yes, sir.

Q And did you ever have occasion to share this view with your mother?

A No, sir. Only insofar as her subordinated account is concerned.

Q Well, did you ever tell your mother that in your view investment in any brokerage firm involves a high degree

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of risk?

A No, sir.

Q You never told her that?

A No, sir. She wouldn't have understood this.

Q Do you recall giving evidence in this case on April 13, 1973? Did you testify in a deposition?

A Yes, sir. Certainly I did.

Q Did you ever say to your mother that you think it would be inadvisable for her to invest in a brokerage firm?

A I think I told her it was inadvisable to subordinate her account, which is tantamount to the same thing.

Q And did you tell her why you thought it was inadvisable?

A I think I told her that subordination was a no-no.

Q Did you ever tell her that capitalization of membership firms of the stock exchange is fictitious and poor financing?

A I made that statement many times, sir, and whether I made it to my mother or not I don't know.

Q Do you believe that?

A Oh, yes, sir.

Q Can you tell us why you entertain that belief?

A Yes, sir. I think I can explain it this way.

When you form a corporation and you invest money in it you put money in common stock. It then becomes what I describe as permanent capital. Of course, you may be required to borrow some money, also to form this corporation, but generally speaking it is prudent and safe to be sure that the amount of permanent capital you put in far exceeds the amount of debt that is allowed to go into the corporation.

Now, in the case of many brokerage offices in the United States they have very little permanent capital and a great deal of debt or apparent capital. I have used the term phony capital because the New York Stock Exchange allows this debt to be classified as capital, and I don't see eye to eye with that concept of the New York Stock Exchange.

Q This reasoning that you have just given us, did you ever advise your mother of that reasoning?

A Mr. Stein, I have tried to explain it very simply to the jury, and I am sure my mother would never get tjis. She is 81 years of age.

Q I understand that, Mr. McDonnell, but did you ever give her the benefit of your wisdom in this area? Did you ever advise her?

A I don't believe so, sir.

Q Page 41 of your deposition in this case, you

were asked:

"Q Did you advise your mother of your reasoning?" referring to the reasoning that you just gave?

"A Yes, I must have. I think I did. I am not sure she would understand but I think I would have told her that."

Does that refresh your recollection you did tell your mother?

A Yes.

Q So you told your mother, didn't you? Yes or no, did you or didn't you?

A Yes, Mr. Stein, I suppose that that is right.

Q You gave some testimony I believe yesterday that at the request of your brother Morgan you attended a meeting with some officials of the New York Stock Exchange in May of 1969 at McDonnell & Company. Do you recall that?

A Yes, sir, I do.

Q And do you recall your testimony yesterday that your brother Morgan told you that a Mr. Bishop was threatening to close down McDonnell & Company because of a violation of the net capital rules?

A Yes, sir.

Q You testified yesterday concerning that meeting with the stock exchange in New York. You testified that you

made a statement that "This is a poker game."

Who did you make that statement to?

A To the court, sir.

Q I understand that. But going back to 1969, to whom did you say that "This is a poker game"?

A I don't believe, sir, that I -- I may or may not have used those particular phrases, I don't know, but I certainly got across the impression to Mr. O'Brien and to my brother that I thought this was a game of bluff.

Q Do you recall using the words "This is a poker game" yesterday?

A I think I do, sir, yes.

Q And do you recall your testimony in this case yesterday, page 268, in respect to this meeting with the stock exchange: "Well, men, this is a poker game right now. I think we should get across the impression to Mr. Bishop that perhaps I would put some money in. How much do you need?"

Do you recall that testimony?

A Yes, sir.

Q Mr. McDonnell, You really weren't considering any investment in McDonnell & Company in May of 1969, were you?

A I don't think so.

Q But you wanted to give the impression to Mr. Bishop, a vice president of the stock exchange, that maybe

you were?

A Yes, I think I was trying to give--

Q You wanted to mislead Mr. Bishop, didn't you?

A No, sir. I was trying to buy time.

Q The way you were trying to buy time was to deliberately mislead him in the belief that you were thinking about making an investment, isn't that a fact?

A Yes, sir, I think you are probably fairly accurate in your assessment. On the other hand, it doesn't preclude the fact that I might have made an investment.

Q I will accept your answer, Mr. McDonnell.

A I beg your pardon?

Q I said I will accept your answer.

In fact, by the time you got to this meeting in May of 1969 you knew that the company was in extreme financial difficulty?

A It would like getting a telephone call that the house was on fire. That's the first knowledge.

Q But you knew, didn't you?

A Well, sir--

Q You knew the house was on fire, didn't you?

A Because I got the telephone call.

Q All right, I will accept that, Mr. McDonnell.

A Thank you.

Q And you were going to make an investment in this company, this house that was on fire?

A Well, one never knows what the circumstances are until you go and find out.

Q After you found out that the house was on fire, as you have put it, you went around to other people and you tried to interest them in making an investment in the company, didn't you?

A My testimony would stand from yesterday, sir.

Q Did you speak to Max Fisher?

A I testified to that to Mr. Brooks yesterday.

Q Did you try to interest Max Fisher in making an investment in this house that was on fire?

MR. BEEBE: Objection.

THE COURT: Sustained as to form.

MR. STEIN: I will withdraw the question.

Q Did you speak to Mr. Fisher about making an investment in McDonnell & Company?

MR. BEEBE: Objection, your Honor. I think it is very repetitious.

THE COURT: If this is a foundation to go on to something else I will permit it.

MR. STEIN: Your Honor, I am trying to probe into some of these conversations with people outside the

company, potential investors.

THE COURT: Overruled. Go ahead.

You said you spoke to Mr. Fisher.

THE WITNESS: Yes, sir.

THE COURT: Next question.

Q You spoke to Mr. Fisher about the possibility of his making an investment in McDonnell & Company?

A About the possibility of his acquiring McDonnell & Company.

Q I will accept that. And I believe you mentioned a man by the name of Meehan, who was a former Governor of the New York Stock Exchange, who is now I should say the late Mr. Meehan, is that correct?

A Yes, sir.

Q What was the purpose of your discussion with Mr. Meehan?

A Well, at the time I would say this was a kind of a salvage operation, you know, to see whether or not Mr. Meehan could gather together a group of his friends and do what could be done to save the ship.

Q Does that mean that you were soliciting Mr. Meehan and anyone, any group that he could put together, for the purpose of getting Mr. Meehan's group to invest in McDonnell & Company?

A I don't know what Mr. Meehan would have done, sir, because--

Q Well, I understand that, we don't know what he was going to be doing. We are talking about your solicitati of Mr. Meehan.

A I said "Joe, we need help, what can you do, can you get together a group of your friends to see what could be done about this."

Q You knew the company was in trouble and you went to your friend Joe and you asked him for money, didn't you?

A No, sir, I did not ask him for money.

Q What did you ask him for?

A Help. Very simply, help.

Q Did you ask him for help that involves financial matters?

A Well, it has to, sir.

Q Of course it does.

A It involves the whole ship was going down, it appeared to be.

Q I agree. And the company needed money, didn't it?

A The company needed money. It needed management as well.

MR. STEIN: Can we mark for identification as Receiver's Exhibit B a letter dated December 30, 1966, written to the New York Stock Exchange by Thomas A. McKay, McDonnell & Company, Incorporated, to which is attached a document entitled "Subordination Agreement," consisting of some 15 pages plus acknowledgments.

(Defendant Receiver's Exhibit B marked for identification.)

Q Mr. McDonnell, would you be good enough to look at the attachment to the letter that I have just described for the record, the attachment. Start with the second page.

A Can I read the letter first?

Q Yes.

A Because I have never seen it before.

(Reading)

All right, sir, I have the second page now.

Q Do you recognize that document as a subordination agreement?

A It has the title "Subordination Agreement" on it, sir, but I have never seen it in my life before.

Q Now, would you be good enough to turn to what would be page 15. It comes just before the acknowledgments.

A I don't have a page number, sir, but are you

talking about the one with the signatures?

Q I am talking about the one with the executions.

A Yes, sir.

Q Do you recognize the signature of Anna Murray McDonnell on that page?

A Yes, I would say that's her signature.

MR. STEIN: At this time I offer Receiver's Exhibit B in evidence.

MR. BEEBE: I would just like to ask counsel whether it is counsel's position that this is the operative subordination agreement as far as the mother, Anna McDonnell is concerned?

THE COURT: Mr. Stein, do you know that?

MR. STEIN: I am not in any position to make that representation, your Honor.

MR. BEEBE: Then I fail to see the relevance.

MR. STEIN: It does appear to be a subordination agreement that was signed by Mrs. McDonnell. The signature has been identified.

THE COURT: What position do you take, Mr. Beebe, with regard to the covering letter?

MR. BEEBE: It is not addressed to this witness. I think the two go as a package. If that is their position that the attached subordination agreement is it

operative, then I see the relevance.

THE COURT: They don't take that position.

I am prepared to admit the signature of Mrs. McDonnell, Sr. but there is no competent identification of the covering letter on this record.

MR. STEIN: I would have to agree with you, your Honor, so let me amend the office so as to exclude therefrom the cover letter.

THE COURT: The agreement will be marked B-1 in evidence and the cover letter will remain marked for identification.

Q Mr. McDonnell, you can disregard the letter. Look at the first page of the subordination agreement.

(Defendant Receiver's Exhibit B-1 received in evidence.)

MR. STEIN: With the Court's permission I am going to read a three-line definition of expiration date.

"Expiration date shall mean, one, the hundredth day following the date on which the owner delivers written notice to the corporation demanding termination of this agreement."

Q Mr. McDonnell, did you ever advise your mother that she could terminate the subordination agreement on a hundred days' notice?

A No, sir. I have never seen this document in my life before.

MR. STEIN: I move that be stricken. The question was answered.

THE COURT: I think he has already answered that once and the answer to your question is no. So the record is unaltered.

MR. STEIN: Thank you, your Honor.

MR. BEEBE: Could we read the rest of that passage?

THE COURT: Why don't you save that for redirect.

Q We were listening to some testimony this morning about a man named Tom McKay. Mr. McDonnell, is it your position that you purchased some shares of stock from Tom McKay?

A No, sir.

Q Is it your position that the shares of stock which you are claiming you were defrauded into buying came somehow from Tom McKay?

A Indirectly, sir.

Q Well, isn't it a fact that you testified yesterday that you ended up with Tom McKay's stock in McDonnell & Company?

A It would appear from the minutes of the board of directors of McDonnell & Company that that was the case.

Q It is a fact, isn't it, Mr. McDonnell?

A It would appear from those minutes that that was the case, sir.

Q You paid 21-odd thousand dollars; is that correct, for that stock?

A 20,000 something.

Q I believe $20,718, excuse me.

A Yes, sir.

Q Who got the money?

A McDonnell & Company.

Q Tom McKay's estate never got the money?

A All I know is my account was debited, and debiting one's account the money has to go to McDonnell & Company. If it was credited to someone else's account, I don't know.

Q Did you ever find out that Tom McKay or his estate ever ended up with your $20,718?

A It appeared that way from my reading of the minutes of the board of directors' meeting held at McDonnell & Company that counsel gave to me later on.

Q When all is said and done, McKay and his estate after he died ended up with your money?

THE COURT: I sustain the objection. I sustained the objection to that the last time it was asked.

Q Do you claim that Tom McKay somehow plays a role in this alleged fraud upon you?

A Do I claim it, sir?

Q Yes.

A Yes, sir, I do.

Q Did you ever, by yourself or represented by an attorney, make a demand on Tom McKay or Tom McKay's estate?

A No, sir.

Q Was that a matter of personal choice?

A No, sir.

Q Were you ever advised not to make such a demand?

A I don't believe so, sir.

Q What did McKay do or say which leads you to make the claim that he defrauded you?

A He furnished me with some financial information on McDonnell & Company which I subsequently found out was false and misleading and had major omissions therein.

Q What did he furnish you?

A I don't have the exhibit here today, sir. It was here yesterday.

MR. BEEBE: Your Honor, I think we have gone over this area. I object.

THE COURT: Is this the materials you were furnish

after one of those luncheon meetings?

THE WITNESS: Yes, your Honor. Mr. McKay went me a whole package of materials and we had it here yesterday.

MR. STEIN: I think I am entitled to probe as to exactly what he had.

THE COURT: I thought we had yesterday for about a half an hour.

MR. STEIN: Your Honor, I will be brief, I promise you.

Can we have those materials, please?

MR. BEEBE: The exhibits are right there.

Q Mr. McDonnell, tell us what he furnished you with.

A He furnished me with a lot of historical data. He furnished me with certain financial data purporting to set forth the financial condition of McDonnell & Company. He failed to include a great deal of pertinent information that would have frightened the life out of me had I seen it, and I would under no circumstances have purchased my stock had I known the existence of that material.

Q Now, there was some testimony this morning that one of the documents that you somehow came into possession of was a statement of financial condition. Do you recall that testimony?

A Yes, sir.

Q Did Mr. McKay furnish you with a statement of McDonnell & Company's financial condition as of any date?

A There is some confusion, sir, as to whether Mr. McKay sent me that particular statement or whether I received it in the mail with my statement. I don't know which.

Q You don't necessarily claim that Mr. McKay gave you that statement of financial condition, do you?

A It is unclear, sir, in my mind.

Q Was it unclear in your mind on May 22, 1970?

A I fail to see the significance of the date, sir.

Q Well, I suggest to you that on May 22, 1970, you told the receiver that Mr. McKay forwarded you certain materials and you list the materials he forwarded to you and you say, "Claimant also obtained a statement of financial condition dated October 31, 1968, which is attached hereto as Exhibit G."

So you knew on the date you wrote this out for the liquidator, May 27, 1970, that you had been furnished with a statement of financial condition; isn't that a fact?

A Well, I was furnished with such a statement, sir, yes. There is no question about it.

Q Well, were you furnished--

A What you are trying--

Q I am not trying to do anything, Mr. McDonnell, except get at the truth.

MR. BEEBE: Objection.

THE COURT: Sustained. Let's just put questions.

Mr. McDonnell, just answer the questions and then there will be redirect examination. Just stick with the questions.

Q Now, let's go back to January of 1969 for a moment. Did you on your mother's behalf or did you advise your mother that perhaps someone ought to seek information about the condition of McDonnell & Company in connection with the subordination of her securities?

A No, sir.

Q Did you ever come to the decision and so advise your mother that you ought to dispense with an investigation of McDonnell & Company at that time because of your belief that the New York Stock Exchange was responsible for the investigation of McDonnell & Company, since it was a member firm?

A That's a long question, but I think my answer is no.

Q Well, did you dispense with an investigation because McDonnell & Companywas a member of the stock exchange?

A Dispense is a verb. I didn't take that action.

Q In other words, there was no investigation, was there?

A No, sir.

Q And what was the reason why there was no investigation?

A There was none called for.

Q Could you explain why there was no investigation called for?

A Well, I had absolutely no reason to suspect that anything was wrong when she subordinated her account.

Q Well, did you ever share with her the view that the New York Stock Exchange was responsible for the investigation of McDonnell & Company since McDonnell & Company was a member firm of the stock exchange?

A Oh, yes, sir.

Q Therefore, you personally were not concerned whether McDonnell & Company was meeting its capital requirements in early 1969, were you?

A I wasn't drawing that inference at all, sir.

Q Well, were you concerned?

A During 1969 I was concerned.

Q How about in January of 1969?

A I didn't know of the problem.

Q Well, was it your view in January of 1969 that

the stock exchange would stand behind the obligations of its member firms such as McDonnell & Company?

A Then and now, sir.

Q That's your personal opinion, I take it?

A Yes, sir.

Q Mr. McDonnell, would you look at Exhibit 19B for a minute.

A Yes, sir, I have it.

Q You have it before you?

A Yes, sir.

Q Just so we know we are looking at the same document that's entitled "Receivership exception and instructions scheduling for notice"?

A Yes, sir.

Q I believe you testified yesterday that although the receiver is allowed the estate's claim on the debenture, the estate has not received payment; is that correct?

A That's correct, sir.

Q Do you know if the claim was allowed and given the status that was asked of the receiver, or did the receiver relegate the claim to a lower status?

A I am unable to answer the question, sir. My attorneys received this, so I don't know.

Q If your claim was allowed you must have concluded

that the receiver has done everything for you that you could have asked the receiver to do in law?

A That doesn't follow, sir, at all.

Q Would you tell me why it doesn't follow?

A Well, frankly, I don't know anything about receiverships or claims by receivers or anything else like that. I really don't know anything about it.

Q Did the receiver accept your claim?

A Apparently.

Q You have no claim against the receiver right now, I take it?

MR. BEEBE: Objection. That's a legal question.

MR. STEIN: We are trying to get to the bottom of this.

THE COURT: I'm not sure what the bottom is that you are trying to get to. Come up to the side bar, please.

(At the side bar)

THE COURT: Mr. Stein, where are you going with this?

MR. STEIN: It's vrey misleading for the jury, I think, your Honor. There was testimony yesterday that the receiver allowed his claim.

THE COURT: But never paid him.

MR. STEIN: And never paid him. That just isn't a fact and I want to bring it out. The receiver did not allow his claim. The claim was made and it was allowed as a subordinated lender, which is a lower category than a general creditor.

THE COURT: Isn't the problem you are faced with that this gentleman doesn't know the legal in's and out's of this and you are talking to him as if he

were a lawyer on this and he isn't? Show him a piece of paper which may acknowledge the situation.

MR. STEIN: I can do it with a document or through some other witness later on.

THE COURT: You want to stipulate on the record that's what happened?

MR. STEIN: I think we could.

MR. BEEBE: You mean stipulate it was not paid?

THE COURT: It was reduced or placed in a category of a subordinated lender and I take it there was not much money around to reach that category.

MR. STEIN: That's what happened. I don't think anyone intentionally misled the jury.

MR. BEEBE: It says here "The claim is allowed as follows," and then it wasn't paid. I don't think the jury is confused at all. I think everyone knows what happened.

THE COURT: Mr. Stein wants to make it clear there was not enough money to reach this category. He wants to do that and I think that's fair enough.

MR. STEIN: Nobody has been paid, nobody in any category has been paid which will be a matter of proof, of course.

MR. BEEBE: I guess my problem is that a lot of the argument in opening statements went to how poor this defendant Mr. Stein represents is, and a lot of his opening statement now is going to be used in summation to say that, and he may read the stipulation then.

It was allowed, it was allowed in this category, allowed in exactly the amount claimed and then it wasn't paid. I think that's perfectly clear.

THE COURT: You will have to await some other time with some other witness then.

MR. STEIN: All right, your Honor.

(In open court)

Q Mr. McDonnell, will you be good enough to look at Exhibit 19B, where it states, "Your claim is allowed as follows: subordinated lenders," and then an amount of $318,622.97. Do you see where I mean?

A Yes, sir.

Q Did you make a claim as a subordinated lender? That is, did you on behalf of the trust make a claim as a subordinated lender?

A Yes, sir. This is it (indicating).

Q It's your testimony that you made a claim as a subordinated lender?

A I made a claim as a trustee for the debenture

that my father had. Now, subordinated lender, no. I don't think this is -- not in the sense that subordination is to all of the other subordinations as such.

That's a highly technical thing.

Q Mr. McDonnell, based on this document you would agree with me, would you not, that the receiver, Mr. Stargatt, has allowed your claim, you as trustee, as a subordinated lender; you would have to agree with that, would you not?

A I would have to agree that is the language put in on this piece of paper but the description I would not agree with. He has allowed a claim of $318,000.

Q You have a disagreement with the way the receiver has handled the claim that you have made on behalf of the trust?

A No, sir.

Q You don't have a disagreement?

A I disagree with the description thereof.

Q And you don't agree that the trust has a subordinated claim against McDonnell & Company receivership; is that correct?

MR. BEEBE: I object, your Honor. These are just legal questions where we have Exhibit 11 in

evidence.

THE COURT: Yes. This is getting us no where.

MR. STEIN: Just one or two questions, your Honor.

THE WITNESS: Am I instructed to reply, sir?

THE COURT: Go ahead. One or two questions more.

Q I take it that you disagree with the receiver's characterization of your claim, as you disagree that you as a trustee represent a subordinated lender?

A That's correct, sir.

Q Now, you also testified yesterday, I believe, that the trust's claim as a subordinated lender has not been paid, is that correct?

A Again, you used the word as a subordinated lender.

Q Has the trust claim been paid?

A That's better. No, sir, it has not.

Q Are you aware of any other claims made by lenders or creditors of McDonnell & Company, are you aware whether any of these claims have been paid by the receiver?

MR. BEEBE: Objection, your Honor. Irrelevant.

THE COURT: If you will stay with his category I will overrule that objection.

MR. STEIN: I will stay with his category.

A No, sir.

MR. STEIN: I have no further questions.

CROSS-EXAMINATION

BY MR. LOFLIN:

Q I am handing you what has been marked in evidence here as Defendant New York Stock Exchange Exhibit V as in Victor.

Mr. McDonnell, you have in front of you Exhibit V in evidence, and I invite your attention to the upper righthand corner. Is there reference there to the fact that McDonnell & Company belongs to various stock exchanges.

A Yes, sir.

Q What stock exchanges are referred to there?

A The New York Stock Exchange, the American Stock Exchange and other leading stock exchanges.

Q Can you supply the details as to the other leading stock exchanges, can you name any of the others that McDonnell & Company belonged to?

A No, sir, not that McDonnell & Company belonged to, I could not.

Q I take it that you would agree that McDonnell & Company belonged to the New York Stock Exchange, the American Stock Exchange and other stock exchanges?

A I would have to agree that their letterhead said that, yes, sir.

Q But you don't know what those other exchanges may have been?

A No, sir.

Q There is no doubt in your mind they belonged to the New York and the American?

A That is correct.

Q You don't dispute that they belonged to some other stock exchanges but you don't know what they are?

A Right, sir.

Q I take it you have heard of the Midwest Stock Exchange?

A Yes.

Q And the Pacific Coast Exchange?

A Yes, sir.

Q And the Philadelphia-Baltimore-Washington Exchange.

A Yes.

Q Do you know whether McDonnell & Company belonged to any of those?

A No, sir, I don't.

Q There are more stock exhcnages other than the two that are involved in this lawsuit?

A Yes.

Q And McDonnell & Company belong to some of them?

A That's what their letterhead said, sir.

Q You don't doubt it, do you?

A I have no reason to doubt it.

Q I am placing before you Plaintiffs' Exhibits 13 and 14.

With reference to Plaintiffs' Exhibit 13, I think that has previously been referred to as your application for Allied membership in the New York Stock Exchange; would you agree with that, Mr. McDonnell?

A Yes, sir.

Q By the same token, Exhibit 14 is your application for allied membership in the American Stock Exchange?

A Yes, sir.

Q I believe you testified that before becoming an allied member of the New York and American Stock

Exchanges you came on to New York and took a course to learn certain information necessary to take an examination; is that right?

A That's correct, sir.

Q In the course of that preparation for the examination did the study include such things as the rules and constitution of the stock exchanges?

A I believe so, sir.

Q And many other matters as well?

A And many other, yes, sir.

Q And all of this was to prepare you for your responsibilities as a branch member and allied member of these exchanges?

A Yes, sir.

Q Now, I invite your attention to the signature page on Exhibit 13 and the paragraph immediately above the signature I am going to read two sentences from.

"I further state that I have read the constitution rules of the board of governors of the New York Stock Exchange and I hereby make application to become an allied member of the exchange. I hereby pledge myself to abide by the constitution and rules of the board of governors of the New York Stock Exchange, as the same have been or shall be from time to time

amended, and by all rules and regulations adopted pursuant to the constitution. This pledge to become effective in the event of and forthwith upon the approval of this application."

Now, you signed this document, didn't you?

A Yes, sir.

Q And I take it you knew that as part of this document the New York Stock Exchange was going to rely on the reprsentations I have just read?

A Oh, yes, sir.

Q And the same would be true, I take it, of the Exhibit 14? I will read a line or two from that document, Exhibit 14, in its first paragraph states:

"In consideration of your granting to me the status of allied membership in the American Stock Exchange in accordance with article 4, section 1(b) of the constitution of the exchange, I hereby pledge myself to abide by the constitution of the exchange as it has or shall be from time to time amended, and by all rules adopted pursuant thereto."

You made that statement, did you not, Mr. McDonnell?

A Yes.

Q And you intended the American Stock Exchange

to rely on that representation?

A They made the statement, I signed it, so I did.

Q You knew they would rely on it in considering you as an applicant for allied membership?

A Yes,sir.

Q Thereafter I take it both exchanges in fact approved your application, so you were able to take on your position in Detroit?

A That is correct, sir.

Q Just one or two questions about the Detroit office of McDonnell & Company in Detroit:

Was it a series of small offices, one large room?

A It was a large center area such as we have here and then on either side of the center area were small individual offices.

Q Did you have a library there?

A No, sir.

Q You spoke in your direct testimony at one point of going somewhere in that office and consulting the rules of the exchanges. Were those kept in some particular place?

A Yes, sir, they were.

Q So you had available to you the constitution and rules of the exchanges that McDonnell & Company belonged to, is that correct?

A Yes, sir.

Q So you could consult them from time to time?

A Yes, sir.

Q Now, at any time before making any investment in McDonnell & Company did you personally consult with any representative of the American Stock Exchange?

A No, sir.

Q Did you have any correspondence with them other than your application for allied membership?

A Other than my application, no, sir.

Q After you made your investment in McDonnell & Co., did you have any personal consultation with any officer or employee of the American Stock Exchange?

A No, sir.

Q Did you have any correspondence with them, send them anything or receive anything from them?

A Not to my recollection, sir.

Q Is it fair to say that no one at the American Stock Exchange ever advised you one way or the other as to whether or not you should invest in McDonnell & Company?

A That is fair to say.

MR. LOFLIN: I have no further questions, your Honor.

THE COURT: We will take our luncheon recess and resume at five minutes of two.

(Luncheon recess)

AFTERNOON SESSION
1:55 p.m.

(In open court;jury present)

J A M E S F. M C D O N N E L L, J R.,

resumed.

MR. BEEBE: Redirect, your Honor?

THE COURT: Please.

REDIRECT EXAMINATION

BY MR. BEEBE:

Q Mr. McDonnell, on cross-examination by Mr. Stein you were asked, among other things, if you had brought any claim against Murray McDonnell or Morgan McDonnell. Do you know if the receiver has brought any claim against Morgan McDonnell?

A No, sir, he has not.

Q Do you know if he has brought any claim against Murray McDonnell?

A No, sir, he has not.

Q Mr. Stein also asked you concerning conversations you had with Max Fisher and Joe Meehan. Do you recall that questioning?

A Yes, sir.

Q I believe at that time you testified that McDonnell & Company was a sinking ship, is that right?

A Yes, sir.

Q Did youconceal that view from Mr. Fisher or Mr. Meehan?

A No, sir.

MR. STEIN: Your Honor, I object to the question. I think it's leading.

THE COURT: I sustain the objection.

Q Did you inform Mr. Fisher and Mr. Meehan of that view?

A Yes, sir, I did.

Q Mr. Stein also asked you concerning a meeting you had with some New York Stock Exchange officials around Memorial Day and particularly about bluffing.

A Yes, sir.

Q Who did you mean at that meeting was bluffing?

A The New York Stock Exchange, sir.

Q You were also asked on cross-examination about subordinated, other subordinated lenders to the company, and you asked for a list.

I show you two documents which we have previously marked as 19G for identification. What are those?

A The first is a letter addressed to the membership services department, American Stock Exchange, and it's signed by Dorothy Oakes, secretary to the corporation, McDonnell & Company, Inc.

Q And the second one, sir?

A The second one appears to be --

Q Instead of having you do this --

A Wait a minute. It appears to be a list of people who own shares in McDonnell & Company.

MR. BEEBE: I offer those in evidence.

I note that letters that you have referred to are dated May 14, 1969, and refer to enclosed lists of current stockholders of McDonnell & Company, Incorporated.

MR. BROOKS: I don't recall the purpose of this offer. As I recall the questioning, he had asked for a list of subordinated lenders. I don't see subordinated lenders on either of these documents, and I would suggest that this is therefore an improper offer on redirect because it's not keyed into the testimony of cross.

MR. BEEBE: If I could direct counsel and his Honor's attention to the last page, there is a list of subordinated debenture holders, but I am offering the

entire document because it lists or purports to list all the holders of the stock, and the document came, according to our notations, from the stock exchange during this case.

MR. BROOKS: Your Honor, again, I don't recall the cross-examination where anything but a listof the subordinated lenders was mentioned.

THE COURT: I sustain the objection at this time.

MR. BEEBE: May we introduce -- I would offer in evidence in that case the last page pertaining simply to the subordinated -- I will withdraw that.

Q Did the subordinated lenders to the company have any voting rights?

A No, sir.

Q Who were the voting shareholders of McDonnell & Company in May 1969?

A Well, I obtained a list of them. I have had them in my office. But I can't tell you now who they are.

Q I show you Exhibit 19G and ask you if the list attached to that represents that list or a substantially similar list of holders of McDonnell & Company voting stock by name and number of shares outstanding.

A I would say this is substantially what I have, yes, in my office.

MR. BEEBE: I offer that again.

THE COURT: On what redirect testimony does this bear?

MR. BEEBE: This bears on the issue raised and extensively questioned upon of who were the owners of this company, was it a family company or was it a company indeed owned by many people; and not simply the family. An issue extensively explored.

THE COURT: I will admit the exhibit on that ground.

(Plaintiffs' Exhibit 19G was received in evidence)

Q Turning to the list of shareholders, would you identify, please, which of those persons holding voting stock of the company were not McDonnell family members,and how much of the shares they owned of the voting stock.

A Which were not members of the family?

Q Yes, sir.

A It would be easier to do it -- there are many names that are not family. If I did it the other way I would only have to mention, you know, family.

Q Please do it my way, sir.

THE COURT: Let's do it the other way again, because the list is in evidence, and you have the basis for any argument you want to make from it.

MR. BEEBE: Very well, sir. Instead of having the witness, in effect, read from the exhibit I will just withdraw the question, if I may.

mdh 1 J.F. McDonnell, Jr.-redirect

Q On the first page of the covering letter I notice there is also an advice to the American Exchange that the 300 shares of stock which were the subject of examination issued to you were issued as of May 12, 1969; is that consistent with your recollection of when those shares were issued?

A Yes, sir.

Q There was some questioning on cross-examination concerning Trial Exhibit 11A, and particularly paragraph 12 on page 4. As I recall, you testified that this document was prepared, and then was signed by you and your mother in 1970, as a claim by the trustees under the will.

I will read you that sentence that is on paragraph 12, and ask a question about it.

"Anna M. McDonnell does not recall ever at any time, prior to her receipt of the letter dated August 4, 1969, Exhibit 7, having been advised either orally or in any other manner by anyone of the purported exchange of the Series E debenture for the Series B debenture. James F. McDonnell, Jr. is certain that at no time prior to his discovery of the letter dated August 4, 1969, Exhibit 7, was he ever advised either orally or in any other manner by anyone of the purported exchange of debentures."

That's the end of the quote.

Mr. McDonnell, is that true?

A Yes, sir, that is true.

Q Coming back to 19G for a moment let me see if I can't ask the question about which were not family members in a more simplified manner. There is a list of shareholders of voting stock approximately two and a half pages long listing names of the voting members. Am I correct that all the names that do not have the name McDonnell in them were members of the family?

A Yes, sir, I think so.

Q You were interrogated on cross-examination concerning what information was furnished to you by the various exchanges prior to or around the time you purchased your stock. Did you receive any letter or other document from the exchanges, either of them, the American or the New York Stock Exchange, which notified you to seek out further information or, indeed, any information about McDonnell & Company before investing in it?

A No, sir, I did not.

Q Are you acquainted with the term "knowledeability letter"?

A No, sir, I don't believe so.

Q You were asked on cross about your departure from the firm of McDonnell & Company in 1945, after being

there a few months, I believe. How long were you there?

A In 1945, less than six months, sir.

Q Did you harbor any resentment towards Murray after leaving the firm in 1945?

A Why towards Murray, sir? I don't believe he was--

THE COURT: The answer calls for a yes or no.

A No, sir.

Q Did your father trust you after you left the firm.

A Yes,sir.

Q Did you have a close relation with him afterwards?

A Very, sir, yes.

Q Did he designate you as trustee under his will?

A Yes, sir.

Q Was this after you left the firm?

A I don't know.

Q Did it continue after you left the firm?

A Yes, sir.

Q And are you, indeed, trustee under his will after he died in 1958?

A Yes, sir.

Q You were asked about the McDonnell Company and who was running it. Starting in January, 1969, who was the -- what role, if any,did Mr. O'Brien play, Lawrence O'Brien?

A He the title of president, but it was more in name --

my judgment would be that it was more in name than in fact.

Q And was he a member of the McDonnell family?

A No, sir.

Q Who succeeded Mr. O'Brien in that role?

A Paul McDonald.

Q Now, that last name is McDonald, -a-l-d?

A Yes, sir.

Q Is he any relation to the family?

A No, sir.

Q Was there a man named Harry Lindh?

A Yes, sir.

Q What was his capacity?

A He came in as operations manager.

Q Of McDonnell & Company?

A Yes, sir.

Q And during 1968 and previously was there a man named Thomas McKay?

A Yes, sir.

Q What was his position?

A I would probably describe it as the same position that Harry Lindh filled.

Q Which was what again?

A Operations manager, but also he was more than that, he was an executive vice president, I think.

Q Who was the controller of the company in that era?

A What era, sir?

Q '68-'69.

A Mr. Rome.

Q Was he a member of the McDonnell family?

A No, sir.

Q I take it Mr. McKay was not?

A No, sir.

Q Was there a Mr. Greese who had preceded Mr. Rome as controller?

A I don't know, sir. I never heard the name before.

Q Was there a Mr. Cassidy who occupied any position at the company in 1968-69?

A Yes, sir.

Q What was his position?

A I wouldn't be able to describe that. It was a very important -- he was a very important member of the management, as I recall, but I don't know what his title was.

Q Did Owen Jaeger occupy a management position at that time?

A He was a man downstairs in what we refer to, I guess, as the back office.

Q And were Mr. Cassidy or Mr. Jaeger members of

the McDonnell family?

A No, sir.

Q Have you ever been a witness before this trial?

A No, sir.

Q There was some examination on cross-examination concerning fees to be charged the accounts of McDonnell & Company and your refusal to pay such fees. What were those fees to be paid in connection with?

A Investment management services primarily.

Q Would this have been for yourself and -- who were the investment management services for?

A For myself and for the various trusts that pertained to my personal family.

Q Did you accept these services and then not pay fees for them?

A No, sir.

Q Did you accept the services?

A No, sir.

Q Was that the reason you didn't want to pay the fees?

A Yes, sir.

Q And were fees indeed -- were they charged to you?

A No, sir.

Q In that conversation with your mother in January

of 1969, did she ask you for your advice as to whether or not she should subordinate her account?

A No, I don't think so, sir.

Q You were interrogated yesterday about a subordinated loan or documents indicating a subordinated loan by your mother in 1961. I believe the name Charles McDonnell appeared on some of those papers. At least there was a signature that looked like that. Were you acquainted with any such transaction by your mother before those documents were put before you yesterday?

A I never heard of it until yesterday here, sir.

Q In your role as trustee there has been questioning about the substitution of an E debenture for the B debenture which on its face said it was due on December 31, 1968. I hand you copy of a document, and ask you if you recognize the signature on that. That has been marked as 19C for identification.

A I recognize it as the signature of Murray McDonnell.

MR. BEEBE: It is dated November 23, 1968, and I offer that as 19C in evidence.

MR. BROOKS: Your Honor, isn't this more direct testimony rather than redirect?

MR. BEEBE: This was the subject, your Honor, of cross-examination.

MR. BROOKS: I object to it as not redirect evidence.

THE COURT: Is there any sponsorship for pages 2 and 3? They are not referred to in the letter.

MR. BEEBE: I am not sure, your Honor, so I will just make it as to the first page.

THE COURT: Very well. I would admit the first page.

(Plaintiffs' Exhibit 19C received in evidence.)

MR. BEEBE: May I read this to the jury, your Honor?

THE COURT: You may.

(Plaintiff's Exhibit 19C read to the jury.)

Q Mr. McDonnell, did you ever receive such a letter concerning the subordinated B debenture?

A No, sir, I did not.

Q At or around December, 1968, did you receive any letter or communication concerning the B denture?

A No, sir, nothing.

Q And you were one of the trustees, were you not?

A Yes, sir.

Q Do you know if your mother received or signed anything at or around that time, she being another trustee?

MR. BROOKS: Object to the question, your Honor.

THE COURT: Either he knows or he doesn't know. Overruled.

A I do not know, sir.

Q Now, I show you another document and ask you if you recognize the signature, again on the letterhead of McDonnell & Company. It appears to be a receipt and it is dated January 7, 1969.

A It is the signature of my brother, Murray McDonnell.

MR. BEEBE: I offer that in evidence.

MR. BROOKS: No objection, your Honor.

THE COURT: Received.

(Plaintiffs' Exhibit 19E received in evidence.)

MR. BEEBE: May I read it, your Honor?

THE COURT: You may.

(Plaintiffs' Exhibit 19E read to the jury.)

Q Mr. McDonnell, did you receive a copy of this document in January, 1969, or any time thereafter?

A No, sir, never.

MR. BEEBE: 19F has been marked for identification I will offer it in evidence. It goes with this line.

MR. LOFLIN: No objection.

MR. STEIN: No objection.

(Plaintiffs' Exhibit 19F received in evidence.)

(First paragraph of Plaintiffs' Exhibit 19F read to the jury.)

MR. BEEBE: No further questions on redirect, your Honor.

MR BROOKS: One or two questions, your Honor.

RECROSS EXAMINATION

BY MR. BROOKS:

Q Mr. McDonnell, do you know what the term corporate control means?

A Corporate control or comptroller?

Q Corporate control.

A No, sir, I don't. It could have a variety of meanings, I suppose.

Q Well, tell me what they are. What would be the first one that comes to mind?

A I never heard the term used as such.

Q You heard the term voting control of the corporation?

A Yes, sir.

Q That's considered a word of art, isn't it?

A I'm sorry, sir, I didn't realize what you were talking about. I'm with you.

Q You heard that term, voting control?

A Yes.

Q Is there any doubt in your mind that as of the time Exhibit 19G is dated, the people whose names are on the list attached, had voting control of McDonnell & Company?

A I would have to add the percentages but I would have to agree, quickly, that that is the case.

Q If you have voting control of the corporation it means you can determine the policy of the corporation, doesn't it?

A It means you can elect the board of directors, yes, sir.

Q And they then control the policy of the corporation?

A Yes, sir.

Q And hire and fire employees; is that right?

A Yes, sir.

Q Now, when you said that you considered Larry O'Brien to be a president in name only but not in fact; is that correct?

A Yes, sir.

Q Well, did that then leave T. Murray McDonnell as the chief executive officer of the corporation in and about January, February and March of 1969?

A Yes, sir.

Q You testified on your redirect that until yesterday you had no idea of any transaction between your mother Anna and your brother Charles in 1971.

A Yes, sir.

Q Have you done anything since yesterday to verify that transaction in your mind?

A Have I done anything since then?

Q Yes.

A No, sir. I haven't heard of it until just right now-- again that is. Nothing.

MR. BROOKS: No further questions.

THE COURT: You may step down, sir.

MR. LOFLIN: If your Honor please, a few questions.

RECROSS EXAMINATION

BY MR. LOFLIN:

Q There is no question in your mind, is there, that as long as your brother, T. Murray McDonnell, was able to exercise his powers, that he was the man who ran McDonnell & Company? He was the chief executive officer?

A That's a difficult question. He was the chief executive officer, yes, sir.

Q Did he act as a chief executive officer?

A Yes, sir, at a time.

Q Well, he wasn't chief executive officer in name only the way Mr. O'Brien was president in name only, was he?

A For a short period, sir.

Q He was chairman in name only for a short period?

A No, he was chairman -- chief executive, let's stick with that one. There was a time when I might have said that the title is there but that he was not, in effect.

Q When was that?

A It was certainly when Paul McDonald came in as president.

Q Are you suggesting that Mr. McDonald was president in something in more than name only?

A Yes, sir, I think I am definitely suggesting that.

Q When you were called to come from Detroit to New York around that Memorial Day weekend in 1969, you have testified that your brother Murray was not there at the time because he was hospitalized; is that correct?

A I think I said incapacitated, sir.

Q Incapacitated. What was the nature of his incapacity?

A He was in the hospital, sir, yes.

Q He was in the hospital?

A Yes.

Q Why was he in the hospital?

A I think it might have had something to do with alcohol.

Q Do you know how long he was away from McDonnell & Company at or about the period of Memorial Day 1969?

A A week, sir.

Q Now, on the Friday before the Memorial Day weekend you described how you left for the weekend to think things over and came back on Monday. By that time, as I understand your testimony, Larry O'Brien had indicated he was going to quit.

A Yes, sir.

Q So I take it it is fair to say by the following Monday Mr. O'Brien was no longer a factor, whether in name only or otherwise?

A Well, sir, that isn't quite true, but he was not on the premises when I came back.

Q And he indicated he was leaving, in a sense resigning his position?

A Yes, and subsequently I think talked out of that decision for a short period of time.

Q But as of Monday you thought he was on his way out; is that correct?

A Yes, sir.

Q So you were there and your brother Morgan?

A Yes.

Q Trying to figure out what to do next?

A Yes.

Q When you came up with the idea of selling the seats on the New York Stock Exchange it was your brother Morgan who issued those instructions to sell the seats, was it not?

A To the best of my recollection it was, sir.

Q Is it fair to conclude from that that in the absence of both your brother Murray and Larry O'Brien's

withdraw, that Morgan was making the decisions for McDonnell & Company?

A I would say, sir, in truthful answer to that that he perhaps usurped the authority which would have been I think at that time in one of the gentlemen that was just mentioned here. Can you just give me the names you questioned me about before?

Q Could you be referring to Mr. McKay?

A No. It wasn't McKay. Cassidy, Mr. Cassidy, I believe he was the senior man at the time there.

Q But on the occasion, at any rate, your brother Morgan decided he would issue those instructions; is that right?

A He did, sir.

Q And the seats were sold?

A One or two seats, yes, sir, or more. I'd have to go back to refresh my memory, I don't remember.

Q Referring to page 274 of your testimony yesterday the statement by the Court:

"You were discussing the fact there were stock exchange seats?

"The Witness: He said we have four seats. I said to my brother Morgan, I think we should sell these seats to raise cash. Morgan then called the floor broker, whose name was Edward F. Becker, who had been a member of McDonnell & Company for many years, and he instructed Edward Becker to sell the seats on the New York Stock Exchange. I believe I told him to sell three seats."

Is that your best recollection now?

A Yes, sir. I wouldn't have told him to sell them all because we wouldn't have been able to function. So it would have been less than all.

Q You said yesterday it was three. Does that sound right to you today?

A Yes, sir.

Q Three of the four?

A Yes, sir.

Q Leaving you still with a seat on the exchange so you could conduct your business with the exchange?

A Yes, sir.

Q Your counsel has just offered on redirect Plaintiffs' Exhibit 19F, and on the second page of that exhibit which is headed "Registered Subordinated Debentures," there is a notation that certain persons were holders of series A debentures and certain persons hold series B debentures.

Down at the very bottom it says, "Georgia Ruth Henderson has redeemed $80,000 of series A debentures."

Who is Georgia Ruth Henderson?

A I never heard of her before in my life.

Q Do you know anything about the circumstances under which she redeemed?

A No, sir.

Q With the exception, referring to the list immediately above, with the exception of Edward F. Becker, who seems to have been a floor man on the New York Stock Exchange, all of the other persons are named McDonnell and they all appear to have exchanged their debentures, but Georgia Ruth Henderson redeemed hers.

A No, sir, that isn't so.

Q Well, I refer you to the first page of Plaintiffs' 19F, particularly the first sentence.

A (Reading) My confusion is due to the fact that there is another name in here that is not the McDonnells?

Q I said with the exception of Edward F. Becker.

A And?

Q And who, sir?

A William P. O'Connor.

Q Who is William P. O'Connor?

A He was an old partner of McDonnell & Company.

Q Becker and O'Connor were on this list along with Murray McDonnell, Hubert McDonnell,Jr., estate of Robert E. McDonnell,Jr. and then the three plaintiffs in this action, finally the estate of Hubert McDonnell, Sr.

MR. BEEBE: Excuse me, if we have to read all these things in evidence, the last finally would actually be Georgia Ruth Henderson on thatlist.

Q Insofar as the page is concerned, the name Georgia Ruth Henderson appears last but she is all by herself, a one-woman list of the persons who redeemed. The other list had to do with people having exchanged. You have no recollection at all of Miss or Mrs. Henderson and how she happened to redeem her debentures instead of exchanging them?

A I never heard of her before this second.

Q You know everyone else on the list?

A Yes, sir, I do.

Q Did T. Murray McDonnell remain chief executive officer of McDonnell & Company up until it went out of business in March of 1970?

A No,sir. I don't believe so. Paul McDonald did.

Q Paul McDonald took on the title of president: is that correct?

A Yes, sir, but I think subsequently he became chief executive officer as well.

Q Do you know when that took place?

A No, sir. I advisedly say I think.

Q You are not certain?

A I am not certain but I think that he became president first and then subsequently became president and chief executive officer.

Q But you are not sure if that happened or when it happened, if it did?

A No, sir. I'm giving you my recollection.

Q Did Morgan McDonnell remain associated with the firm until March of 1970?

A I don't know, sir.

Q Do you have any recollection of him having resigned prior to March of 1970?

A No, I don't think so.

Q Well, you were very much in touch with the New York office, I believe, during the summer of 1969. Was Morgan there and active during that period?

A Yes, Morgan was there for a while. If I recall correctly, toward the latter months of the summer he went back to Chicago where he lives to resume the management of the Chicago branch office.

Q When would that have been?

A Well, sir, I think that probably was late August, September.

Q And you were manager of the Detroit branch office during all of this period; is that right?

A Yes, sir.

Q How long did you continue in thatpost?

A I don't remember. I think I must have continued until Shearson Hammill walked in and said "This is our office, we just bought it."

Q That branch was sold to Shearson Hammill?

A Yes.

Q This was part of the retrenchment program that we have heard about?

A It was the tail end of the program, yes, sir.

Q Certain branch offices were sold off?

A First and then more next and more next. That kind of a thing.

Q There were several ways of retrenchment; is that correct?

A Yes, sir, that is my recollection.

MR. LOFLIN: Thank you. I have no further questions.

MR. BEEBE: May I ask one or two more to clarify something?

THE COURT: Yes, if it bears on the recross.

REDIRECT EXAMINATION

BY MR. BEEBE:

Q You mentioned Mr. Becker, was he president after that Memorial Day weekend?

A Yes, he was.

Q Were the other officers and directors of the company who we talked about earlier this afternoon who were on board at that time, did they continue on board after that Memorial Day weekend?

A Yes.

Q Whether they were named McDonnell or not: is that right?

A That is right.

Q And my final question is, I take it from what you said that Georgia Ruth Henderson is, not to your knowledge, a member of the McDonnell family, is that right?

A I don't know who she is, sir.

MR. BEEBE: I have no further questions.

THE COURT: Thank you very much.

MR. BROOKS: We would like Mr. McDonnell to remain subject to call should we need to call him on the defendants' case. We will work out a convenient schedule for him to follow. I understand he has some appointments and I think he can make those.

MR. BEEBE: He lives in Detroit but I will try my best to have Mr. McDonnell abide by it as long as we have adequate notice.

THE COURT: You have another witness that has been waiting since yesterday afternoon: is that right?

MR. BEEBE: I think we have the cross of Anna McDonnell.

THE COURT: Don't you have another person who has been waiting patiently to testify since yesterday at 2 o'clock?

MR. BEEBE: Could we approach the bench, your Honor?

THE COURT: I mean, do you or don't you, because if the person is here I would just as soon use them and save this kind of proof that can be fit in at almost any time to a time --

MR. BROOKS: Mr. McElroy has been waiting since yesterday.

THE COURT: That's why I would like to get to him.

(Witness excused)

MR. BEEBE: Very good, your Honor. The plaintiffs call Mr. Andrew R. McElroy.

A N D R E W R. M c E L R O Y, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BEEBE:

Q Mr. McElroy, are you an employee of the New York Stock Exchange?

A Yes, I am.

Q What is your position, please?

A I am principal examininer in the department field examination.

Q Keep your voice up because the jury has to hear everything you say.

A I am a principal examiner in the department of field examination.

Q What does the job of principal examiner entail?

A Generally it entails supervision of men who are doing the examination in the field.

Q Is this examining the books and records of the member brokerage houses of the New York Stock Exchange?

A That is correct.

Q Could you give the jury, please, some background about yourself? Did you graduate from the University of Notre Dame?

A That's correct.

Q Did you have a Ph.D. in commerce?

A Ph.B., bachelor of philosophy in commerce. I majored in accounting.

Q You majored in accounting?

A That's right.

Q When did you graduate, sir?

A I believe my degree is dated February 1944. However, I wasn't there at the time.

Q Were you in the service at that time?

A Yes.

Q Did you also pursue some graduate work in later years at the New York University Graduate School of Business Administration?

A Yes. I took eight hours of courses at NYU Graduate School.

Q Have you become a certified public accountant?

A Yes, I have.

Q When you went to work after the service, did you go to the accounting firm of certified public accountants of Haskins & Sells?

A That's correct.

Q How long did you stay there, sir?

A Eight years.

Q Then in 1954 where did you go?

A I went to work for Johnson & Higgins, insurance brokers.

Q What did you do for them?

A I was accountant and cashier.

Q And then did you go to work for Mobil Oil Company?

A One year.

Q What did you do there?

A I was, I guess, a staff accountant.

Q Where was that?

A Up on 42nd Street.

Q And in 1963, did you go to work for the New York Stock Exchange?

A That's right.

Q What did you start at in 1963?

A I started as an examiner in 1963. I became a senior examiner in 1967, a supervising senior examiner in 1970. I became a principal coordinator in 1973 and I became a principal examiner about two weeks ago.

Q If you could explain a little, just go over

that again, you were first an examiner, then a senior examiner, than a supervising senior examiner, then a principal coordinator and then a principal examiner. Are all those jobs kinds of up the scale in the same department, in the same area?

A With the exception of the principal coordinator's job, yes. For about a year and a half I was outside the examiner's department. Under a reorganization plan in 1973 I got the job of principal coordinator for special projects,and in theory I was supposed to be working with firms in trouble, but it never really worked out that way and I ended up spending most of my time as an assistant to our enforcement department.

Q Could you describe for the jury, and kind of lay the groundwork, of what the duties of examiners are when they go out in the field to the member firms?

A As it was in 1969?

THE COURT: Mr. McElroy, address yourself to the area about which I gather you are going to be asked in your testimony. What were your duties at that time?

A In 1969, in that time, generally our field duties consisted of going into a member firm of the New York Stock Exchange and checking out the answers to

financial questionnaires. The member firms at that ti. were required to file three financial questionnaires with the stock exchange, one in each third of the year -- that is, from January through April would be the first third, May, June, July, August, would be the second third, and then the last four months would be the third third.

One of those questionnaires was involved with the surprise audit by the member firms outside public accountants, and the other two questionnaires were prepared by the member firms themselves. The format was pretty much similar,but one involved an audit and one was merely the reporting of the financial information by the firms themselves.

The examiners would go into the firm and review the books and records to see how this information was prepared, and to see that it was prepared accurately, because from that information the stock exchange, again through examiners, would compute the firm's net capital.

In addition to reviewing the preparation of the financial questionnaire, we would also make a general review for compliance with the stock exchange's rules and regulations, the Securities and Exchange Commission's rules and regulations, and the regulation...

of the Federal Reserve Bank on credit extension.

Naturally, that is a lot. I am sure we couldn't cover ev erything a hundred per cent, but that was what our job was to be.

Q That is the purpose of why you went in there?

A Yes.

Q Could we lay aside the Federal Reserve rules for the purpose of this, and just focus on your job of assuring or reviewing for compliance with the New York Stock Exchange rules and the Securities and Exchange Commission rules in the computation of net capital.

Could you describe for the jury briefly the basics of the financial rules and the operation rules that you were enforcing?

MR. BROOKS: I object to the question, your Honor.

THE COURT: Yes. Is that the best evidence? Isn't it written down somewhere?

MR. BEEBE: I offer in evidence at this time the rules as they existed in the New York Stock Exchange in the constitution of the exchange, at least the pertinent sections that Mr. Brooks has furnished in compliance with our document demands.

THE COURT: Is there any objection?

MR. BEEBE: They are for 1968 and 1969.

MR. BROOKS: No, I have no objection.

THE COURT: They will be received.

(Plaintiffs' Exhibits 34 and 35 were received in evidence)

Q Let's just work with 1968 for the moment for convenience, Exhibit 34. which is approximately an inch thick. Could you summarize for the convenience of the jury the primary financial and operational rules that it was your duty and your function to go in and review when you went in on your examiner's reviews.

MR. BROOKS: I object to the question.

THE COURT: Overruled.

A The primary -- do you want me to open this and look at it? Rule 325 was the primary financial rule that we were involved in in enforcing.

Q Let's start right away with 325, if I may. I gather you are quite familiar with these rules having worked with them since 1963, is that correct?

A I hope so.

Q So do I. Was there a ratio commutation undre rule 325, Mr. McElroy?

A Yes, there was.

Q Was there an early warning level which indicated that the firm was approaching a danger area in that ratio?

A It's not written in the rule.

Q Was there one that was the practice at that time?

A I believe so.

Q Was it 1500 per cent?

A I'm not sure whether it was 1500 or 1750. At one time I know it became 1500, but I think at one time it might have been a higher ratio than that.

Q Was a ratio of over 200 per cent a violation of rule 325?

A That's what the rule says.

THE COURT: How long is this rule?

THE WITNESS: How many pages?

THE COURT: Is it in pages, or paragraphs?

THE WITNESS: Pages.

THE COURT: Based upon your experience, Mr. McElroy, are you in a position to capsulize the essence of that rule for the jury?

THE WITNESS: I can give a try.

THE COURT: Please do.

THE WITNESS: Well, the essence of the rul

establishes that a member firm must keep -- well, maybe I should start by defining. There are two terms that are going to crop up, net capital and aggregate indebtedness.

Briefly, and without going into a lot of detail, aggregate indebtedness generally was the indebtedness of the member firm to its customers and to other brokers for customers' business and to outsiders.

It was the amount of money that they owed.

Net capital, briefly, is the firm's net worth, and net worth is more or less described as the excess of assets over outside liabilities. Net worth reduced by certain assets which we considered non-allowable. Generally those assets which were not readily convertible to cash generally in 30 days. We consider marketable securities as good assets, and we wouldn't deduct them, but something like furniture and fixtures, and even stock exchange memberships, we considered as non-allowable assets and would deduct those from net worth in computing net capital.

Does that make sense?

Q That is a very good start, I think.

THE COURT: You said something about ratio.

THE WITNESS: The ratio of net capital to aggregate indebtedness should never be more than -- aggregate indebtedness should never exceed net capital by more than 20 times. In other words, if you had net capital of a million dollars your aggregate indebtedness should not exceed twenty million dollars.

THE COURT: This is in Rule 325?

THE WITNESS: That's right. As the existed then.

THE COURT: Go ahead.

Q And you said that was the most important rule that you were enforcing?

A Yes.

Q And you said that when the ratio reached something like 17½ times --

A Or 15, whichever it was at the time.

Q That was considered an early warning?

A Well, it was considered something to be noted and followed up on. I don't think we used the term early warning at that time.

Q It was a signal of some sort?

A Yes.

Q Who reported to you when you were senior examiner

between 1967 and 1970?

A There was no standard set up. In fact, the distinction between examiners and senior examiners was, I would suppose, one of experience more than any difference in work, and I guess we had somewheres in the nature of about 45 or 50 junior examiners, examiners, senior examiners, and at any one time any group of them could be put together to work on a job. We didn't have any standard organization chart as far as the chain of command was concerned.

One day you might be assigned to a job with examiner A as an assistant, and then the next day, the next week, it might be examiner B. Sometimes two or three senior examiners would work together on a jobband one of them would be designated the supervisor on that job.

Q Was it generally true that the senior examiners visited larger and more complex firms?

A Yes.

Q Was one of the firms that you visited during that period McDonnell & Company?

A Yes, that's right.

Q Was it one of the larger firms in the New York Stock Exchange?

A I guess so, though I don't know exactly how it

was ranked. There are different ways to rank them.

Q Was one of the duties of the examiners to check if debentures were paid?

A I suppose that could enter into it.

Q Was one of the duties to investigate the documents authorizing the payment of a debenture?

A It could be, yes.

Q You hesitated there. About two years ago, on July 1, 1973, you gave a deposition here, and if I might read from pages 23 and 24, I ask you if this would refresh your recollection on that particular subject. At the bottom of the page:

"Do you recall investigating the documents reflecting the authorization for rolling over the prior debenture into the new debenture? Is that part of your examination?

"A I believe that would be part of the investigation. Generally, I would say yes. Specifically, I don't recall any particular instances."

Is that correct?

A That would be a pretty fair statement.

Q Did the examiners also check subordinated loans?

A Well, we generally would check all the items of capital, I would say.

Q Including the underlying documents?

A Well, not necessarily. I wouldn't want to say we would check underlying documents generally if they were new subordinations, but if they were existing subordinations well, I think the main thing wewere interested in was whether they were approved subordinated agreements. If new capital was coming in, we would certainly want to see a letter from the stock exchange saying that it was approved. Probably we would spend more time checking the details of what made up the subordinated borrowing, especially, you know, if it is a list of securities.

Q We talked about the financial rules, and particularly Rule 325. Did the examiners also check the books and records in compliance with Rule 440 and some of the other rules pertaining to operations?

A Yes, that's right.

Q And generally whatwere you looking for there?

A There are certain books and records that are required to be maintained. In the course of checking out net capital you would be reviewing these books to see that they were properly maintained.

Q Would you pleasetell us what the examiners did after their investigation uncovered an apparent violation of the rules.

A Well, we would report this to our supervisor.

Q And what was the chain of command after the supervisor level?

A Generally, at that time I would be reporting to a principal examiner, and I would have reported it to the principal examiner.

Q Could you please keep your voice up. There is some noise outside.

A I would report my findings to a principal examiner.

Q And as we go up the chain of command what would the principal examiner do with your information if it indicated a violation?

A Well, I guess at that time he would notify the coordinator for the firm. I believe we had coordinators then. Of course the chief examiner. I don't know who all else would be notified.

Q And just to fill in the chain for the jury here, what were the levels above the chief examiner that this information would go to next if it indicated something serious?

A I believe in 1969 we had an assistant vice president and vice president of the department of the member firms, and on up to the executive vice president of the stock exchange, and the head of the stock exchange; the

Board of Governors. I don't really know how far a particular report would go.

Q Would it depend on the gravity of the information?

A Yes.

Q Was McDonnell & Company having problems in 1967 and 1968?

MR. BROOKS: I object to the question. I think he has to be a lot more specific.

THE COURT: Yes. Sustained as to form.

Q Were there back office problems with the record keeping at McDonnell & Company in that period of time, sir?

A I wasn't there in 1967, and I wasn't there in 1968.

Q Had you heard when you did come there and conduct an examination at McDonnell & Company, and look at the record of what other examiners had done, that they had had problems in that period?

A You mean was I aware at the time?

Q Were you aware after you went in and looked at the records?

A After I looked at the records -- well, as far as 1969 was concerned, and the end of 1968, I guess you could say I was aware that they had record keeping problems.

Q If I could again refer to your deposition, sir, which was a few years ago, maybe this would pinpoint that a

little better. Starting on page 40, there were questions about the period from 1967 through 1970, and the following series of questions and answers:

"You used the words 'general conditions.' Would you like to describe or can you describe the general conditions in the brokerage field in this time period?

"A The brokerage business was having a problem of the requirements of business exceeding the capabilities of the firms to record the business they were doing.

"Q Would this be referred to commonly as the paper crush or the paper avalanche?

"A That's right.

"Q And this resulted in back office problems as to recording various transactions?

"A For some firms this became a problem.

"Q Was this a problem that existed at McDonnell & Company during this time period?

"A That is a matter of opinion, I suppose.

"Q Well, would you know whether they had problems that exceeded their capabilities?

"A I think they were having some problems in my opinion."

Is that correct?

A Yes, but I wouldn't address that to 1967.

Q Is that because the records that you saw didn't indicate one way or another?

A I didn't look at 1967.

Q So if I start with 1968 it is all right?

A If you start with the latter part of 1968.

Q Very good.

Was one of the problems a computer change-over?

A Yes.

Q McDonnell & Company was trying to effectuate?

A Yes.

Q Was the computer change-over successful in 1968, or did it fail?

A I don't know whether the -- when the change-over began.

Q If I told you that the records indicate it began somewhere in the middle of 1968, would that sound right to you?

A Yes.

Q And did it fail throughout 1968?

A I don't think I can really answer directly to that.

Q They did have a problem?

A They had a problem.

THE COURT: Would this be a good time to take our break?

MR. BEEBE: Any time, your Honor.

THE COURT: We will take our break, ladies and gentlemen.

(Jury excused.)

(In open court. Jury not present.)

THE COURT: It occurs to me that we have used the term back office problems, paper crunch, et cetera, et cetera, and I don't think the jury has the slightest idea of what is meant by that, or its impact upon this case. Would it be inappropriate to suggest that this witness develop that a little bit? I don't want to take anything out of order.

MR. BEEBE: I agree wholeheartedly.

THE COURT: I don't think many of them have the slightest idea of what you are talking about.

MR. BEEBE: I am not giving away secrets by saying Mr. McElroy is here primarily as a quasi-expert to lay the ground work of what was going on at the lowest levels.

THE COURT: I suggested this out of the presence of the jury because he is a witness for an adverse party and therefore I am not going to interfere with the examination but I thought it would help everybody.

MR. BROOKS: I think it is a good idea. I don't want to have him classified as an expert, but I think he can tell us about his problems.

rdh 1 McElroy-direct

(In open court, jury present.)

BY MR. BEEBE:

Q Mr. McElroy, we were talking about the 1968 era, and one of my questions referred to a paper crunch. Could you describe for the jury what the paper crunch was?

A My understanding of the paper crunch was that in the latter half of the 1960s the volume of trading in both the stock exchanges and the over-the-counter market increased at a rate that was not anticipated by anybody. As a result there was so much business, so many transactions to process that many of the brokerage firms had problems of trying to keep up with the volume of business. Not only the brokerage firms, I would guess that the banks also who were transfer agents had very difficult problems in trying to make the transfer of ownership on securities promptly.

This led to, well, many different problems with the industry that we hadn't run into before. They were new problems to us. We found that once the volume got this high, the first problem would be that the two brokers who engaged in a transaction might not agree upon the transaction, whether it was on the floor of an exchange or whether it was over-the-counter, so that broker A would have bought a stock for his customer from broker B and then subsequently they found that they didn't agree. Maybe one broker didn't

recognize the transaction at all. This gave rise to a problem of the broker's trades not being able to be completed. It was called a fail problem in that the selling broker was unable to deliver the proper securities to the buying broker.

As this mounted up then it led to the problem of inaccurate stock records. The stock records of a brokerage firm is one of the most important things in their back office operation. It is a record which reflects what customer owns what stock and it also reflects where that stock is located, whether it is in the vault of the firm or whether it is yet to be received from another broker, whether it is in collateral for a customer's loan. The stockrecords should always balance, in that the number of shares which are long reflect those shares that are owned by the customers or the brokers generally, and the numbers of shares that are short, the long and short should balance, reflect where these securities are.

If they don't balance it presents a problem to the broker because either he has a customer who is supposed to own stock and he doesn't know where it is, or else he maybe has stock available and he doesn't know what customer it belongs to.

This then generates problems in the dividened

department, because if your stock record is inaccurate, when a dividend payment date comes, you really don't know how many shares you are supposed to be collecting dividends for and maybe you don't know who those dividends belong to.

So it just generated up into a pretty sizable problem and I think it is fair to say that nobody had seen such a problem before.

THE COURT: Did this have any effect on Rule 325?

THE WITNESS: It did have an effect on Rule 325. It gave us some problems, too, because we had situations that we really weren't sure how to treat as far as Rule 325 was concerned.

If I can think of a good example. Well, take dividends for instance. As the dividends were due to the brokerage firm, at least I thought they were and they recorded them as such, and the payments were made to the firms, we began to have dividends receivable on the books becoming older and older. This was something we hadn't had before.

When they became more than 30 days past payment date we generally would consider them as a non-allowable asset, so it would reduce net capital. There were many problems of that nature that affected net capital.

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Q Thank you, sir. Now, did all of those problems that you just listed for us, that is, stock records, which you said were very important, fails to deliver, dividends, and I might add to that list segregation of securities, which I believe is also a record keeping problem, did all of those exist as McDonnell & Company and were they all growing worse as 1968 progressed?

MR. BROOKS: I object. He said he only had knowledge of the latter half of '68.

THE COURT: Yes, addressing yourself to the period of which you have knowledge, Mr. McElroy.

A They existed when I was at McDonnell & Company.

Q From your searching of the records as to what the exchange had in its files from the latter half of 1968, which you testified about earlier, they had existed at the latter half of 1968?

A Yes, they were in existence, I believe, at the time the audit.

Q And was the audit October, 1968?

A I believe it was the end of October, yes.

Q That's the surprise audit?

A Yes.

Q That's done by outside the accountants?

A Yes.

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Q That's the surprise audit?

A Yes.

Q That's done by outside accountants?

A Yes.

Q Were McDonnell & Company's profits also going down in the latter half of 1968?

A I don't know the answer to that.

Q If I could read from a couple of years ago your deposition, the question was:

"Do you recall what effect the computer change had upon McDonnell Company's operations?

"A I think they might have had a profitability problem.

"Q Anything else?

"A It is my only recollection."

That's on page 42.

A That would be 1969, I think. I know they had a profitability problem in 1969 but I don't know about 1968.

Q Sir, do you have a nickname?

MR. BROOKS: Your Honor, I would like to make an objection. Mr. Beebe read some testimony but he skipped some testimony in the middle which I think qualified the answer that was given at the end.

THE COURT: Let me see it.

(Pause)

MR. BEEBE: I might say I believe Mr. Brooks is absolutely right and I would rather read it the correct way. I apologize for having read it wrong.

THE COURT: All right.

Q I will start again, Mr. McElroy, and do it right this time. At the bottom of 41:

"Did they have any other problems that you were aware of during the time period that you came across, either through your investigation or through what you were told by other members of the exchange?

"A I think they might have had a profitability problem."

Is that consistent with what you just testified to?

A Yes, I think that's right.

Q Now, sir, do you have the nickname Andry?

A With some people, yes.

Q Does that appear on documents?

A Not very often but it has I know.

Q Sir, am I correct that you actually went in as an examiner at McDonnell & Company in about February, 1968?

A Yes.

Q And how much notice did you have before you were

called to go in and work on McDonnell & Company?

A Well, not very much. I was, I believe, out of town until the end of the first week of February, 1969.

Q Were you aware that there was a need for new capital at McDonnell in February, 1969?

A At some point.

MR. BROOKS: I object. I think the question is leading.

MR. BEEBE: He is an adverse witness, your Honor.

THE COURT: That may be but I will permit it in this instance.

Go ahead.

Q Were you present in the office of one of your superiors at that point, Mr. Bishop, when the need was discussed for new capital?

A Yes, I believe so.

Q And what was said at that time?

A I really couldn't say. Just that it was a discussion about the problems that we had found and then there were comments about where new capital would be coming from, and so forth, and so on. But I don't remember any specifics.

Q You mentioned that the general definition of capital asset, for the net capital computation, was that it was readily convertible into cash, at least within 30 days.

A I don't believe it states 30 days in our rule but we have been using interpretations of that nature for a long period of time, and as far as I know that was our interpretation in 1969.

Q It is not in the rules though, is it?

A I don't believe it is in the rule. It may be as regards some specific aspect.

Q When capital is included within the net capital ratio, is it called good capital? Is that the jargon?

A Yes.

Q Could you explain what an arbitrage transaction is?

A Well, there are various kinds of arbitrage transactions, but generally an arbitrage transaction is buying something in one location while selling it in another location and hoping to make a profit on the differen

Q Was there a time when there was an arbitrate problem at McDonnell & Company with regard to the net capital computation?

A I don't remember that I had any specific problems with it, though from other discussions subsequent, I guess, I have heard that they had some problem in their arbitraging rights.

Q Could you explain for the jury what the problem was how arbitrage transactions can raise a problem as far as

net capital is concerned.

MR. BROOKS: Your Honor, if Mr. McElroy has no firsthand knowledge and is just reciting what someone else may have told him, I would object.

THE COURT: I sustained that objection.

MR. BROOKS: We are willing to produce any witness who might have firsthand knowledge of these transactions.

MR. BEEBE: I may take up that offer at some point.

THE COURT: Sustained.

Q Mr. McElroy, is a tax refund claim good capital within the net capital rule?

A I would say generally, no. Generally.

Q Could you explain why it would not be generally good capital?

A Generally you can't count on the Internal Revenue Service to give you your money back within 30 days. That's the guideline thatwe have been using.

Q Have you ever heard of a member firm being allowed to use a tax refund claim as good capital?

A Yes.

Q. What was that?

THE COURT: Yes.

Q I know but what was the firm.

A I believe Dean Witter & Company. In order to do

that they got a letter from the Internal Revenue Service stating that it would be paid within 30 days.

Q In other words, until they got the letter they couldn't --

A We wouldn't. I had a big argument with them about it. They finally got a letter, so we allowed it.

Q Do you recall any other company ever having convinced you to use a tax refund as good capital?

A Well, subsequent to 1969 I think the IRS has got some kind of a quitclaim where it is not a tax refund as such but a return of an over-payment. I think that the IRS has something that they guarantee payment within a specific period of time. And if it is less than 30 days we would allow it. But generally I don't know of any particular instance.

Q Is that guaranty in writing then?

A I don't know whether it's part of the -- written on the return form itself. I'm not clear about that.

Q All right.

A It's enough to satisfy us that it's due within our time frame.

Q Within 30 days?

A Yes. It could be that it's due within 45 days and we will allow it 15 days after the filing, something like that.

Q But you would never allow it more than 30 days after?

A No, I don't believe so.

Q Are you acquainted with lettered stock?

A Well, somewhat, yes.

Q Could you define for the jury generally what is legened or lettered stock?

A Well, if I'm correct in my thinking, securities to be sold to the public generally have to be registered with the Securities and Exchange Commission. And some securities may exist with a legend stamped on them to the fact that they are not registered with the Securities and Exchange Commission. Sometimes that's

called lettered stock and sometimes I believe there is a letter attached to the stock stating specific situations when it can be sold.

Generally, it's stock that is not readily marketable in the normal sense.

Q Is lettered stock good capital under the net capital rule?

A Generally we would not allow value for it because it's not readily marketable.

Q When you say generally, is there any specific exception you have in mind?

A Yes, sir. There are exceptions. Where the firm that owns the stock has been able to demonstrate satisfactorily to the exchange or to whatever regulatory body that it's reporting to that it can readily convert that stock to cash through some way or form, then it's allowed value. Perhaps not as great a value as fully negotiable stock, but some value might be allowed for it.

Q Back in this testimony here at the deposition, let me read you this series of questions regarding lettered stock. Pages 34 and 35.

"Do you recall any instance during the period of 1967 through March 1970 where a member firm was allowed to use" -- I apologize. I was going to read

about tax refund and you have already testified tothat.

I will read that because it makes the next sentence make sense.

"Do you recall any instance during the period of 1967 through March of 1970 where a member firm was allowed to use a tax refund that had not been received as capital for its capital ratio?

"A No.

"Q As to restricted or lettered stock, was that permitted to be used as capital for value of the restricted or lettered stock?

"A No.

"Q Was a certain percentage allowed to be used as capital?

"A Not to my knowledge."

Up until that is that consistent with what you have just testified to?

A Yes, except that I think I just testified there are exceptions on lettered stock.

Q There is a long answer here. Let me see if I can summarize that to see if that is what you are saying.

If a firm takes the lettered stock and goes out and raises money with it, for instance through a bank

loan, would that be -- the loan that comes out of the bank, would that be considered good capital?

A No, I don't think so.

When you borrow money on stock you get cash and cash is an allowable asset. But I don't think we would say at that point we were allowing capital value for the stock. That might be one means of demonstrating that the stock had value.

Q What would be another means of demonstrating that the lettered stock had value for capital purposes?

A Well, as I said before, specifically if they could demonstrate some plan to sell it.

Q Would that have to be sold within 30 days in order to qualify?

A Probably. I don't make the exceptions, so I really don't know.

Q Who makes the exceptions?

A Well, I don't know that I can answer that question either. Somebody who has a position senior to me. It wouldn't be made generally by the examiners department, I don't think.

I know of exceptions being made based on studies by what was then called, I think, the department of finance. They have somebody make a study on the

marketability of a security. If from that study it was determined that it could be marketed in some way, then they would grant permission to allow some percentage of the market value as good capital.

Q Based on the fact that it had liquidity and was salable?

A Yes.

Q Readily marketable; is that right?

A That's right.

Q Are you acquainted with mutual funds as part of brokerage houses?

A Well, you mean as a product that they might sell?

Q Are they treated as a separate package in the brokerage house, a separate operation generally?

A I don't know exactly what your question refers to there. They sell mutual funds shares and they usually keep mutual funds separated from sales of common stock listed on the New York Stock Exchange, common stock listed on the American Stock Exchange and from bond sales.

Q Let me give you a specific example here of McDonnell & Company. Do you recall that McDonnell & Company was negotiating the sale of its mutual fund to the

firm of Shyman, Hochstein & Trotter?

A Yes, I have some recollection of that.

Q What I was driving at is could you explain to the jury what that would be, when you sell a mutual fund to someone else?

MR. BROOKS: I object to the question. I don't think it can be asked in the abstract like that. I don't think there is a common mutual fund that is commonly sold to another in any kind of standard transaction.

THE COURT: I will sustain it on that ground.

Q Mr. McElroy --

THE COURT: Incidentally, I assume that this is going to be connected in some way.

MR. BEEBE: Yes, sir.

THE COURT: Thatall counsel are apparently aware of some forthcoming connection.

MR. BEEBE: Yes, sir.

THE COURT: Go ahead.

Q Mr. McElroy, was the sale of the McDonnell & Company mutual fund that was negotiated or being negotiated with Shyman, Hochstein & Trotter, a sale of an asset of McDonnell & Company?

A I think that would be a proper description, yes.

Q You mentioned that things like furniture and seats on the exchange and pictures on the wall, I suppose, are not assets for the net capital computation?

A Not allowable assets.

Q Not good capital?

A Not good capital.

Q Was the sale of or the negotiated proposed sale of the mutual fund a good capital asset for purposes of the net capital valuation?

A I'm not 100 per cent sure on that. I think that there was a time when we didn't allow value for it and I think maybe a time when we did allow value for it.

Q What would the difference be?

A Well, I don't remember the terms of the agreement but I suspect it would have to do with when payment was going to be made.

Q Would that be the 30-day rule you were talking about again?

A Yes.

Q And --

A Again, I don't specifically remember how this went, but to me that would probably be the way it would

go.

Q Would you allow as an examiner that kind of contract or negotiation to be a good asset, good capital asset where there is no method of verifying the return of payment in less than 30 days?

A Probably not, in an abstract question like that. Each thing has to be looked at in its particulars, actually. As a general rule, no, but when you look at a particular transaction more closely you might find something to contradict that.

Q Well, for instance, you mentioned the 30-day rule. What would make an exception for the 30-day rule? What's an example?

A I have nothing in mind right offhand.

Q Coming back to this discussion about the raising of new capital in February of 1969, can you recall anything about that discussion? Who was present? In whose office was it?

A There was more than one meeting that I attended.

Q Take them one at a time.

A I really can't straighten one out from the other.

Q Can you give me the substance of who was

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present and what was said, where they were held?

A Well, I believe at least one office -- one meeting was held in the office of Mr. Bishop, who was the vice president of the department of member firms. Maybe both of them, I'm not sure. As to whowas there, I wuold be speculating about most people. I believe representing the firm at least Murray McDonnell and Mr. McKay and I'm sure that Mr. Bishop and probably one or both of my fellow examiners and I think possibly Fred Stock. Really I 'm not absolutely sure who was there. I think perhaps Mr. Schuette, who was coordinator for McDonnell at that time, a stock exchange employee whose position was coordinator and had jurisdiction or had dealings with McDonnell & Company. I can't remember.

Q You mentioned Mr. Schuette and Mr. Stock. Could you identify Mr. Stock? I think the man is deceased now but what was his positionat that time?

A At that time I believe he was an assistant vice president of the department of member firms.

Q Is he on Mr. Bishop's level or maybe just his assistant?

A He was above my level.

Q You said your fellow examiners. Who were

your fellow examiners?

A I had two men working with me. John Zaremba and Ed Cummings.

Q In answer to that question you mentioned both of them. I gather you do remember at least two meetings of this nature that I have asked you about.

A I'm sure we had two meetings that I attended of this nature.

Q Can you give us any testimony as to what happened at the first meeting?

A It was a preliminary discussion of my findings at McDonnell & Company. That's about as much as I can remember.

Q What were your findings?

A Well, my findings were that the net capital ratio, books and records problems.

Q Were McDonnell & Company representatives present at that meeting?

A I'm sure that Murray McDonnell, Mr. McKay and I guess perhaps Mr. O'Brien was there, too. There might have been more people from McDonnell. There were quite a few people there, if I recall properly.

Q And what was the upshot of the meeting?

A Well, I think I went back and finished my

examination.

Q What did the exchange people say to the McDonnell people at the meeting? What were they telling them?

A I'm sure they were telling them they should take steps to improve their situation.

Q Was this because they were in violation of the net capital rule?

A I would say apparently they were but I don't know that definitely they were. I didn't make the decision on the violation. I reported certain facts and I think I reported an apparent violation. They were talking about means of raising capital and how their new computer system would be working very well. It was going to be tested again, and so forth, and so on.

Q It still wasn't working in February '69, I gather from what you have just said, the computer system?

A To the best of my knowledge it was not.

Q How did they say they were going to raise new capital?

A Well, the only thing I can really remember, and I don't recall whether it was at that meeting or not, was that they had a potential source of capital through

Congressman Hugh Carey, and I presume that was an O'Brien connection. But it never materialized. There was continuous talk of more capital coming in, big numbers, but I just don't recall any specific details.

Q Does that pretty much exhaust your recollection about this first meeting you remember attending?

A The first and the second. I can't really remember what happened at which meeting.

Q That was the upshot of both of them?

A That's my recollection.

THE COURT: February '69?

THE WITNESS: No, this would be about April, I believe.

Q Was this after you had -- I think you told us you went in in Februaryon short notice --

A A-d finished sometime in April, I think.

Q Do you think you could tell the jury what you did between February and April, what your examination consisted of?

A I don't really specifically remember how I approached the situation, but I was trying to establish what the capital position of the firm was, and I don't even remember at this point what date I was working. It might have been January, the end of January. I really don't know. But my biggest job was attempting to verify the net capital position of the firm, and we made some review of customer's records, as I recall.

We attempted to establish the accuracy of their segregation records. I just don't remember the details.

Q Was anything said at that meeting in April after your examination about telling the capital contributors to McDonnell & Co. about the situation?

A Not to my knowledge.

Q You don't remember --

A No, sir.

Q You testified that there was a surprise audit as of October 31, 1968. When did that come in? When was

it completed?

A I don't know right offhand, but generally the audits were supposed to be filed with the Exchange approximately forty-five days after the starting date, and they were subject generally to the possibility of getting two extensions, which might add, I think the extensions were for about fifteen days each, it's possible that it could have been as late as early January, but I don't recall offhand.

Q What would be the occasion for getting extensions?

A The audit of a broker dealer the size of McDonnell is a big job, and especially with record keeping problems it just takes more time.

Q And they --

A It was not unusual for auditors to, or for firms to request extensions of time.

Q Who were the auditors who conducted this?

A I believe it was Lybrand, Ross. Bros. & Montgomery, as they were known at that time.

Q Did the auditors also submit, in connection with that audit, a document known as a comment letter? Was that the custom in the regular course?

A Well, they would submit an opinion letter.

Q I show you --

A And a material inadequacies letter. That generally came in after the audit was filed.

Q Could you explain what is a material inadequacies letter from the auditors?

A The auditors are required to submit the questionnaire form to the Exchange and to express an opinion as to its accuracy, and we also required them to give some expression as to the adequacy of the records and internal control of the firm in a separate letter.

Q That was an Exchange requirement?

A It was, I believe, also an SEC requirement.

Q I show you a document which we have marked as Exhibit 20 for identification, which is dated March 12, 1969, on the letterhead of Lybrand, Ross Bros. & Montgomery, addressed to Mr. T. Murray McDonnell of McDonnell & Company.

Is that the kind of document you were referring to as pertaining to McDonnell & Company?

MR. BROOKS: I object. Mr. McElroy has referred to at least two documents, one an opinion letter and one something else. The question should be more specific.

Q Could you describe what that is, Mr. McElroy?

THE COURT: Is this going in evidence?

MR. BEEBE: Yes, sir.

THE COURT: Is there any objection to it?

MR. BROOKS: I haven't seen it.

THE COURT: Why don't you look at it?

(Pause.)

MR. BROOKS: There was a good deal of confusion in the deposition as to what it was.

MR. BEEBE: I just asked the witness.

THE COURT: Without getting into what anybody said about it, is there any objection to its authenticity or admissibility as an exhibit?

MR. BROOKS: I would like it identified by the witness first, and what it is being offered for.

THE COURT: Let me see it.

(Handed to Court.)

MR. BROOKS: I do object to the pencil line drawn across the front page in any event.

THE COURT: Do you have a copy without that?

MR. BEEBE: I don't know as I have a copy without that, but I would be willing to stipulate that that is not part of the offered exhibit.

THE COURT: All right.

MR. BROOKS: I continue the objection. I think

we should produce a copy with a clean first page.

MR. BEEBE: We will try to find a substitute first page, if that is necessary, your Honor.

THE COURT: My only question is: Is there going to be any question? In the record so far this exhibit is not sponsored. Is there any question, however, in the interest of saving time, as to its authenticity or its relevance to any of these issues, or its arguable relevance, let's put it that way.

MR. BROOKS: I don't have any objection to its authenticity, your Honor. My problem is what it is, and who got it.

I will agree it is authentic for what it says on its face. It is a true copy.

THE COURT: Then I will admit it in evidence. We will take care of the underlying problem of the front page before it is given to the jury in any way.

(Plaintiff's Exhibit No. 20 was received in evidence.)

Q -Mr. McElroy, could you describe for the jury what this --

THE COURT: I thought he had.

MR. BEEBE: I don't think so.

THE COURT: Didnt- he say there were letters

sent from Lybrand --

THE WITNESS: I hadn't looked at this letter yet. At first glance, I don't think it is either of what I referred to before. I think it is the auditor's report to management, which is not part of our requirements.

In other words, the auditors would discuss their examination with management in a separate letter, and this is addreseed to Mr. T. Murray McDonnell, so I presume it is a report to management.

Q Have you ever seen that letter before, a copy of it, if you recall?

A I don't recall seeing it, sir.

MR. BEEBE: In his prior deposition, your Honor, he did testify as to the exact document.

THE COURT: Go ahead.

Q If I could remind you, sir, at page 75 there was the question: "Will you take a look at Plaintiff's Exhibit 55, marked in a prior deposition, and tell me whether you have seen this document before"

"Answer: I have probably seen it."

MR. BEEBE: I take it there is no question this document I have marked in evidence as Exhibit 20 is Exhibit 55 that was before Mr. McElroy at his deposition.

MR. BROOKS: There is no question about that.

Q (Reading:)

"Q This is a letter of Lybrand, Ross Bros. & Montgomery to McDonnell & Company commenting on their examination of McDonnell & Company as of October 31, 1968?

"A Yes."

Was that your testimony and your answer at that time?

A Yes, I guess it was.

Q And you swore to this deposition. Did you think it was accurate when you testified to it?

A Sure. I don't question that at all. I still don't recall having seen it.

THE COURT: His answer was he probably did. He didn't say he did.

MR. BROOKS: I think it is consistent with his testimony today.

THE COURT: He didn't say he did. He said he probably did, which is not much more of a statement than "I don't recall."

MR. BEEBE: Maybe I better read on. It is long. There was the question --

THE COURT: Mr. Beebe, are you going to question this gentleman about any of its contents? There is an exhibit in evidence on counsel's stipulation it is

authentic, but I would not feel, given the foundation here, that you can question this man about what use he made of the contents of it, if any, given the fact that there is not sufficient showing he ever saw it.

Are you going to question him on this exhibit?

MR. BEEBE: Yes, sir, I was. Perhaps I could just ask him one question and move on.

THE COURT: All right.

Q Directing your attention to the bottom of the first page, sir, the sentence "The net capital of the firm and the ratio of aggregate indebtedness to net capital as computed with our understanding of Rule 325 of the New York Stock Exchange were" -- I have a legibility problem here -- "were" -- and then there is a dollar amount -- "and 3,027 per cent respectively."

Now, my question is: Is 3,027 per cent as a ratio a violation of Rule 325?

A Yes. However, this is as computed by the auditors in accordance with their understanding of the rule. They don't make the final determination.

Q Do the auditors tend to be more favorable or less favorable?

MR. BROOKS: I object.

THE COURT: Sustained.

Q Mr. McElroy, you described some meetings a moment ago, and I show you a memo dated March 28, 1969, entitled "McDonnell & Company."

Apparently, I have several copies of the same thing attached together. It is just a one-page memo. It has been previously marked for identification as 21.

I ask you if that memo reflected one of the meetings you were discussing.

A No, it does not.

Q Was this another meeting you attended on March 28th concerning McDonnell & Company?

A Yes.

MR. BEEBE: I offer this in evidence.

MR. BROOKS: No objection.

THE COURT: Received.

(Plaintiff Exhibit No. 21 was received in evidence.)

MR. BROOKS: I see there is more underlining on this exhibit.

THE COURT: That is correct.

MR. BROOKS: Then it may be on the document that was marked.

THE COURT: It is. And it is in pencil.

MR. BROOKS: The original of the exhibit as

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marked in the deposition has no underlining, so I would object to the underlining. I would have no objection to a clean document.

MR. BEEBE: I have no problem with substituting another one, if I could get a clean copy from fellow counsel.

THE COURT: Very well.

(Pause.)

Q Do you have the revised version in front of you?

A Yes, I do.

Q Have you had a chance to review that?

A Yes.

Q Was this a meeting called by the examiners on March 28, 1969, to discuss their findings after reviewing the files of McDonnell & Company?

A I don't remember who called this meeting.

Q Who attended the meeting? There are some names here. Are all those people examiners?

A No. The first three people are in the examiners department. Mr. Schuette and Mr. Nalewaik were a coordinator and his assistnat, and Mr. Spies, I believe, was in the finance department. I am not sure of his exact position at that time.

Q Was the purpose of the meeting to discuss your

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findings at McDonnell & Company?

A It would appear so.

Q It states in the second paragraph that "The margin department is in bad shape, mainly due to errors."

What was the size of the errors, the quantity that you were discovering in your search through McDonnell's records when you went there to examine them?

A I really don't recall, other than what is stated in the document. I didn't write this document.

Q It says in the fourth paragraph "The firm has 28 error accounts" and also that the "reorganization department was a mess."

Was 28 error accounts in the scope of your experience a large number, normal, modest?

A I think, if I can answer that in a different way, I believe that -- I think I am correct in making the statement that each branch office did the certain amount of trading for itself and that the majority of these error accounts were for each branch office. So that, for instance, if the San Francisco office did handle a few over-the-counter trades and put through a bad trade it would be in the San Francisco error account, and if the Detroit office handled an OTC trade that produced

an error of some type it would end up in the Detroit office error account.

So that the fact that there were 28 ofthem, while I wouldn't say that was necessarily good, if another firm put all its errors into one account it might have more errors than McDonnell did, and it might have less

Q Your testimony at your deposition, page 86, was about this same document: "Is 28 error accounts a large amount?

"A I would consider that a large amount, yes."

Is that what you testified?

A I guess that's what I said; my recollection I believe is still correct about the branch offices. Perhaps I didn't think of it at that time, but I do recall that as being one of the reasons why there were that number of error accounts.

Q When you gave your testimony did you consider that a large amount?

A Yes.

Q When you said thatthe reorganization department was a mess --

MR. BROOKS: I object. Nobody established this memorandum was written by Mr. McElroy.

THE COURT: Yes. He testified it wasn't.

MR. BEEBE: I am sorry, I misspoke.

Q Was the reorganization department a mess?

A My recollection was that they had a problem with keeping track of the transactions that went through the reorganization department.

Q Mr. McElroy, I don't want to put words in your mouth, I would just like to read what you testified to at your deposition:

"Having read this characterization" -- which is the one I was just talking about, and I am talking about page 87, -- "Having read this characterization, that is, the reorganization department was a mess, would you agree with that characterization?

"A Yes, I think I would."

Is that correct?

A Yes.

Q Sir, the sentence before that says:

"The examiners also noted that the figures given by the firm in its SOQ's are suspect."

Was that correct? Is that what the examiners noted?

THE COURT: What is SOQ?

THE WITNESS: Special operations quesionnaire.

A I at this time really don't remember that much

about what was reported in the special operations questionnaire.

Q Would you quarrel with the word "suspect" there, sir?

A I don't think I can answer yes or no.

Q Up in the lefthand corner there are some initials. The top initials are OQ. What did that stand for, if you know? Was it operations questionnaires?

A It's probably -- on the original it says SOQ.

Q Was that a file at McDonnell?

A Yes.

Q Were those questionnaires prepared by the company?

A By the member firms, yes.

Q And submitted to the stock exchange?

A To the stock exchange.

Q And one of your duties was to review those, is that right?

A I believe that is right, yes.

Q The initials underneath, whose initials were those?

A Up in the corner?

Q Yes.

A I believe that's Herb Schuette.

Q He was the coordinator at that time, is that right?

A Yes.

Q Was it the normal course of business to prepare this kind of memorandum after such an examiners meeting,or was this extraordinary?

A I don't know, because I'm sure it was prepared by the coordinator, not by me.

Q That would be Mr. Schuette?

A Mr. Schuette, or his assistant, Mr. Malewaik.

Q Was there an as of date when you were reviewing these McDonnell & Company records? Were you reviewing them as of October 31, 1968, the date of the audit?

A I don't think so. I think I was looking at 1969 figures primarily.

Q How long in your experience would it take for a company to develop a mess, as you testified there was here, in the reorganization department? How long would it take for such a condition to develop?

A I think it could vary between a short period of time and a long period of time. I don't think you can classify it as something thathappens in ten days or ten

months. It can happen instantaneously, I wouldsay. I am just recalling a case I know where it happened instantaneously on a conversion from one type of record keeping system to another.

Q To a computer record keeping system?

A This happened to be to a computer service bureau.

Q Moving from the general to the specific, after examining the McDonnell & Company records from that period from February or January up until March, we have gotten so far, could you make any observation as to how long it had taken for the company to get in the condition, the books and records to get in the condition thatyou observed there?

A I don't think I could make any estimate of the time. It could be that it was from the time they started changing computers, but I really don't know.

Q That was in the middle of 1968, is that right?

A I don't know. You said that.

THE COURT: Are you going on to something else now?

MR. BEEBE: I was going to, sir.

THE COURT: We will take our recess now.

We are finished for the day, ladies and gentlemen, and we will stand in recess until tomorrow morning.

Tomorrow we are sitting only half a day, because I have other matters in the afternoon.

(Adjourned to May 2, 1975 at 10 a.m.)

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